

HAC9RAH1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

16 CR 760 (RMB)

6 AHMAD KHAN RAHIMI,

7 Defendant.  
-----x

8 New York, N.Y.  
9 October 12, 2017  
10 9:25 a.m.

11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge  
and a jury

14 APPEARANCES

15 JOON H. KIM  
16 Acting United States Attorney for the  
Southern District of New York  
17 EMIL BOVE  
18 ANDREW DeFILIPPIS  
19 SHAWN CROWLEY  
20 Assistant United States Attorneys

21 FEDERAL DEFENDERS OF NEW YORK  
22 Attorneys for Defendant  
SABRINA SHROFF  
MATTHEW LARSEN  
MEGHAN GILLIGAN  
RACHEL MARTIN

23 ALSO PRESENT: Special Agent Joanna Maroudas, FBI  
24 Paralegal Ayushe Misra, U.S. Attorney's Office  
Paralegal Dante O'Connell, Federal Defenders of NY  
Investigator Anna Finkel, Federal Defenders of NY

HAC9RAH1

1 (Trial resumed; jury not present).

2 THE COURT: Thanks. Please be seated. We're going to  
3 get the jury in just one minute.

4 While we're waiting for the jury I just want to put  
5 one note on the record. Somebody asked me from the public  
6 about the question of the dumpster. So I looked back in the  
7 transcript. The dumpster was actually approved as coming into  
8 evidence on October 3, not on October 5 where I think it was  
9 reported. And, in fact, I think we even discussed it earlier  
10 than that. But in the transcript itself of October 3 it is  
11 presented that the government wishes to introduce the dumpster.  
12 Defense objected. And I said I would allow the dumpster in.  
13 So that's the latest date that that was approved. I just  
14 wanted to clear that up. Ready?

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

HAC9RAH1

DeFusco - direct

1 (Jury present)

2 THE COURT: We're going to pick up. I think we were  
3 at the cross-examination of Agent DeFusco or was there still  
4 some direct?5 MS. CROWLEY: I have a little bit of direct left,  
6 Judge.

7 THE COURT: Okay.

8 DAVID P. DEFUSCO, resumed.

9 THE DEPUTY CLERK: Sir, before we begin I'd like to  
10 remind you, you're still under oath.

11 MS. CROWLEY: May I proceed?

12 THE COURT: Yes.

13 MS. CROWLEY: Thank you, your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. CROWLEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. Before we broke yesterday I think we were talking about the  
19 Elizabeth devices that you analyzed and I believe you testified  
20 that you analyzed six devices from the Elizabeth scene?

21 A. That is correct.

22 Q. And that one of those devices was functioning during the  
23 render-safe procedure in Elizabeth and the remaining five were  
24 rendered safe at the FBI laboratory?

25 A. That is correct.

HAC9RAH1

DeFusco - direct

1 Q. Were you involved in that render-safe procedure?

2 A. Yes, I was.

3 Q. Could you describe how that procedure played out?

4 A. Just in brief, the five devices that were still intact were  
5 transported to the FBI academy where we have facilities to  
6 disassemble devices remotely. So in that process we were able  
7 to utilize tools to remotely render them safe. And by saying  
8 that I mean we separate the fusing system from the explosive  
9 main charge making it safe to collect that evidence so I can  
10 take it to the laboratory and conduct our normal forensic  
11 examinations.

12 Q. And was explosive material collected from each of those  
13 five devices?

14 A. Yes.

15 Q. Where was the explosive material in each of those devices?

16 A. They were contained inside of each of the containers.

17 There were four containers that consisted of a water bottle  
18 container and one container that was a pipe, a galvanized pipe.

19 Q. And was the explosive material that was removed from those  
20 containers tested?

21 A. Yes. They were tested, yes.

22 Q. And what did you do with the devices after they were  
23 rendered safe?

24 A. After we rendered them safe we packaged them and  
25 transported them over to the FBI laboratory where we did our

HAC9RAH1

DeFusco - direct

1 normal check-in notes, followed our normal standard procedures  
2 for checking in evidence to the FBI laboratory.

3 Q. I'd like to talk for a second about the analysis you  
4 performed on the device that was rendered safe at the Elizabeth  
5 scene. What were the components of that device?

6 A. Looking at the physical evidence that was submitted to the  
7 laboratory, the components of that device consisted of an  
8 explosive main charge that was identified by our explosive  
9 chemists as the primary explosive HMTD. The container for that  
10 particular device was a PVC pipe fragments that I analyzed.  
11 And the fusing system that was submitted was fragments of hobby  
12 fuse which is a nonelectric fusing system or way to initiate an  
13 explosive.

14 MS. CROWLEY: Please publish Government Exhibits  
15 409-1, 410-1, and 411-1.

16 Q. Are these pieces of evidence that you examined that were  
17 collected from Elizabeth?

18 A. Yes. These are items I examined.

19 Q. What were they?

20 A. My opinion these are items that are consistent with a white  
21 colored PVC-type container.

22 Q. So that was the container for one of the Elizabeth devices?

23 A. Yes.

24 Q. And I believe you mentioned that the explosive main charge  
25 you identified or that was identified was HMTD?

HAC9RAH1

DeFusco - direct

1 A. Correct.

2 Q. And the fusing -- what was the fusing system in this  
3 device?

4 A. The fusing system that was submitted to the laboratory were  
5 fragments of green colored hobby fuse, a nonelectric fusing  
6 system.

7 MS. CROWLEY: Could we publish 412-1, 413-1 and 414-1.

8 Q. What are these items?

9 A. These are -- item 71, item 75, and item 76 are pieces of  
10 fragmented pieces of green colored hobby fuse.

11 MS. CROWLEY: Let's publish Government Exhibits 415-1  
12 and 416-1.

13 Q. Are these additional pieces of evidence you analyzed from  
14 the device that was rendered safe on the scene of Elizabeth?

15 A. Yes. These are various metal objects that are consistent  
16 with being fragmentation. You have nuts and washers and things  
17 of that nature.

18 Q. So in your opinion was this fragmentation necessary for  
19 that device to function?

20 MS. SHROFF: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: It's not necessary for the IED to  
23 function. It's just added fragmentation that causes it to be  
24 more dangerous when it explodes.

25 Q. Agent DeFusco what, if anything, did you conclude about how

HAC9RAH1

DeFusco - direct

1 this first device was configured to detonate?

2 A. In its original configuration prior to the render-safe  
3 attempt, it was a PVC-type container that confined the main  
4 charge explosive. The electrical fusing system would have been  
5 the hobby fuse. And that hobby fuse would have been inserted  
6 inside the container. So when you light or initiate the one  
7 end of the hobby fuse you're going to have a consistent flame  
8 that's going to burn through the hobby fuse. That flame will  
9 enter inside the container. Once that flame enters inside the  
10 container and comes in contact with the HMTD you're going to  
11 have a violent explosion.

12 Q. What, if anything, did you conclude about how this device,  
13 in fact, detonated?

14 A. It detonated during the render safe or it exploded during  
15 the render-safe procedure while bomb technicians were  
16 attempting to separate the main charge explosive from the  
17 fusing system, basically removing the explosives from the  
18 container.

19 Q. And what was the reaction that caused that detonation in  
20 your opinion?

21 A. My opinion, speaking with the bomb technicians on the scene  
22 and reading some reports following up, the technique that they  
23 used, they tried to use a device to crush the end of the cap,  
24 to pop it off to open it so you can pour the explosives out.  
25 During that process when they were using that device and it

HAC9RAH1

DeFusco - direct

1 clamped, it may have caused sufficient friction or heat which  
2 caused it to function or caused it -- the energetic material to  
3 explode.

4 Q. Okay. You testified that you also analyzed devices made  
5 from water bottles; is that correct?

6 A. That is correct, yes.

7 Q. And how many water bottle devices did you analyze?

8 A. There were four total.

9 Q. And, again, those were rendered safe at the FBI laboratory?

10 A. Yes.

11 MS. CROWLEY: Let's publish Government Exhibit 417-1A.

12 Q. Is this a photograph of one of the water bottle devices you  
13 rendered safe and analyzed?

14 A. Yes. This is a photograph after the render-safe procedure.  
15 This photograph was taken during the checking portion of our  
16 analysis. You can see a container on the right that has been  
17 wrapped in tape. And on the left side you have green color  
18 hobby fuse that is protruding through the cap of the water  
19 bottle. That cap had a hole in the top, which we call a  
20 priming hole. That's a hole that is drilled in there or cut in  
21 there to allow a fusing system to enter inside the container.

22 Q. And was an explosive main charge identified for this  
23 device?

24 A. Yes. An explosive was identified. It was a mixture of a  
25 low explosive, an improvised black powder, and a high

HAC9RAH1

DeFusco - direct

1 explosive, primary explosive known as HMTD.

2 Q. And that was inside this water bottle?

3 A. It was inside the container, yes.

4 Q. So what, if anything, did you conclude about how this  
5 device was configured to function?

6 A. Again, it would function. You have the container. The  
7 fuse would be inside the container, mixed in intimate contact  
8 with the explosive main charge in the inside. You light the  
9 fuse on one end, the hobby fuse on one end. Again, that flame  
10 will transmit through that fuse into the container. Once it  
11 goes into the container you will have energetic reaction and an  
12 explosion will take place.

13 Q. And with respect to the three remaining water bottle  
14 devices that you rendered safe and examined, did those consist  
15 of similar components as those you identified here?

16 A. Yes. They were all consistent with one another.

17 Q. Were they the same?

18 A. They were -- they were similar; the same water bottle  
19 construction, same type of tape, same type of hobby fuse and  
20 same type of explosive. So they were all similar, yes.

21 Q. Do they all contain the HMTD black powder mixture inside?

22 A. Yes, according to our explosive chemists' reports, yes.

23 Q. With respect to all four of these water bottle devices,  
24 besides ignition through the hobby fuse, could these water  
25 bottle devices have detonated in any other way?

HAC9RAH1

DeFusco - direct

1 MS. SHROFF: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Again, these are very dangerous items.

4 MS. SHROFF: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: They are filled with a very sensitive  
7 primary explosive and a very sensitive improvised low  
8 explosive. So, yes, they are susceptible to heat, friction,  
9 impact, anything like that could cause it to go off.

10 Q. So if these devices, in your opinion, if these devices had  
11 been propelled or thrown, could that have caused them to go  
12 off?

13 MS. SHROFF: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: There is a potential. Yes. Absolutely.  
16 I would not want someone to throw that device at this wall  
17 behind me as I'm sitting here.

18 Q. Let's talk about --

19 MS. SHROFF: Objection, your Honor.

20 THE COURT: Overruled. That's four objections to the  
21 same question.

22 Q. Let's talk about the final device that you analyzed from  
23 Elizabeth. What was that device comprised of?

24 A. That was a galvanized pipe elbow, refer to it as a pipe  
25 elbow.

HAC9RAH1

DeFusco - direct

1 MS. CROWLEY: Let's publish Government Exhibits 423-1D  
2 and 423-1E.

3 Q. Are these photographs of the sixth device you analyzed from  
4 Elizabeth?

5 A. That's correct. This is after the render-safe portion of  
6 what we did. This is at the point we were checking into  
7 evidence.

8 You can see here on the left photograph there is the  
9 galvanized pipe wrapped in tape. There was a hole drilled into  
10 the side of the metal container to allow a -- a primer hole to  
11 allow the hobby fuse to enter. And the explosive main charge  
12 was already removed when this picture was taken.

13 Q. And what was the explosive main charge in this device?

14 A. This one was identified as an improvised black powder.

15 Q. When you say improvised, what do you mean?

16 A. It was not a commercially made black powder. So it was  
17 not -- according to our explosive chemists' reports it was not  
18 a black powder that was purchased from a store. It was  
19 improvised or homemade.

20 Q. What, if anything, did you conclude about how this device  
21 was configured to function?

22 A. This device was configured to function. You have the  
23 explosive main charge in the inside that was susceptible to  
24 heat, shock, friction. You had a nonelectric fusing system  
25 that was entering through that priming hole. Again, you light

HAC9RAH1

DeFusco - direct

1 the green hobby fuse. That flame transmits through that hobby  
2 fuse. As soon as that flame enters inside of that container,  
3 you're going to have an energetic reaction of that low  
4 explosive. It's going to burn. It's going to produce those  
5 gases. Those gases are going to increase in pressure to the  
6 point where the metal container is going to fracture. It's  
7 going to explode in all directions.

8 Q. Agent DeFusco, you testified that the 27<sup>th</sup> Street device  
9 and the four water bottle devices from Elizabeth contained both  
10 black powder and HMTD; is that correct?

11 A. That is correct.

12 Q. And are those high explosives or low explosives?

13 A. The black powder is a low explosive and the HMTD is a high  
14 explosive, a primary high explosive.

15 Q. Now in your 16 years with the FBI have you ever seen this  
16 combination of explosive materials used in an IED before?

17 A. Personally, I have never seen the combination of the two  
18 together. I have seen black powder on its own and I have seen  
19 HMTD on its own. But I've never seen the two of them combined,  
20 an improvised low explosive and at a very sensitive high  
21 explosive, combined in the same main charge. In my experience  
22 I've never seen it.

23 Q. And you testified yesterday that it was your opinion that  
24 the 27<sup>th</sup> Street device was likely configured to ignite  
25 through an electric fusing system; is that right?

HAC9RAH1

DeFusco - direct

1 MS. SHROFF: Objection to the leading.

2 THE COURT: Overruled.

3 THE WITNESS: That is correct.

4 Q. And can you remind us what that electric fusing system was  
5 comprised of?

6 A. For the 27<sup>th</sup> Street device it consisted of an electrical  
7 fusing system. And we'll go over the four parts of an  
8 electrical fusing system again. A power source, the first  
9 thing, was part of the cellphone battery provided the power.  
10 The switch in that electrical fusing system was the modified  
11 cellular telephone that was modified by removing the vibratory  
12 motor and attaching the wires to that contact point.

13 There were wires present. They are the conductors.  
14 That's the third element of your fusing system. So you had a  
15 pathway for the electricity to flow.

16 And that final part of an electrical fusing system is  
17 your initiator. And that's where we had the modified Christmas  
18 tree lightbulb that is capable of initiating a low explosive or  
19 a primary high explosive.

20 Q. Now, in your opinion, besides ignition through that  
21 electric fusing system, could anything else have caused the  
22 27<sup>th</sup> Street device to explode?

23 A. Again, very dangerous configuration. You have a mixture of  
24 a improvised low explosive combined with a high explosive  
25 primary inside of a container. Again, these types of

HAC9RAH1

DeFusco - direct

1 explosives are very sensitive to heat, shock, friction. So any  
2 type of movement like that or unnecessary movement can cause it  
3 to explode. If you provide that stimulus, whether it's an  
4 impact, it does have a potential to explode. As a bomb  
5 technician I would not, even if you removed that electrical  
6 fusing system, I certainly would not go up to that container  
7 with a lid on it and try and remove that container by hand  
8 because just the simple moving of the container, the friction  
9 that you may create from the metals, if you have any of that  
10 product on that area there is a potential.

11 It may not happen every time. I liken it to the  
12 analogy of a cobra. I'm not going to go up and smack a cobra  
13 in the head ten times in the face.

14 MS. SHROFF: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: You may get away with it three or four  
17 times, but on that fifth time it may come out and bite you. So  
18 it's a very dangerous, in my opinion, it's a very dangerous  
19 item.

20 MS. CROWLEY: One moment, your Honor.

21 Nothing further. Thank you.

22 MS. SHROFF: We have no cross, your Honor, but we  
23 would ask for a sidebar.

24 THE COURT: Okay.

25 (Continued on next page)

HAC9RAH1

DeFusco - direct

1 (At the sidebar)

2 MS. SHROFF: As you noted, and I objected throughout  
3 his testimony given the repetitive nature of the testimony, the  
4 definitional question such as the definition of improvised, low  
5 explosive, high explosive, asked over and over again, at least  
6 twelve times or more.

7 THE COURT: Which question was asked twelve times?

8 MS. SHROFF: I can actually give you a count if you'd  
9 like at some point.10 THE COURT: Tell me one question that was asked twelve  
11 times.12 MS. SHROFF: I think the definition of low explosive  
13 and high explosive was asked --

14 THE COURT: Twelve times?

15 MS. SHROFF: I think so, but I could be wrong in my  
16 count.

17 THE COURT: I think you might be.

18 MS. SHROFF: The same thing for what is improvised.

19 THE COURT: Is that the objection?

20 MS. SHROFF: Yes, your Honor.

21 THE COURT: Repetition?

22 MS. SHROFF: No, no. Not just repetition. Also that  
23 essentially there was no firsthand testimony. He testified  
24 about what other people in his unit had done.

25 THE COURT: So now we're rearguing the question of

HAC9RAH1

DeFusco - direct

1 whether he should be called as an expert. I've already ruled  
2 on that. He's been testifying as an expert. Your objection is  
3 noted to calling him. And it's noted again.

4 MS. SHROFF: And I'm just pointing out at the end of  
5 the testimony that all of the evidence he presented to the jury  
6 is cumulative and that had been based on all the other people  
7 that had worked in the unit.

8 THE COURT: You'd have to be more specific than that.

9 MS. SHROFF: Certainly, your Honor. So he testified  
10 about what Mcfarlane did and he didn't do any work on the  
11 chemistry part.

12 THE COURT: That's enough of this. If you want to put  
13 in a letter, the number of times each question twelve times.

14 MS. SHROFF: I just wanted to make the objection to  
15 your Honor.

16 THE COURT: Good. Thanks.

17 (Continued on next page)

18

19

20

21

22

23

24

25

HAC9RAH1

Merritt - direct

1 (In open court)

2 THE COURT: So thanks very much, Mr. DeFusco. You're  
3 excused. We're going to have the next government witness.

4 (Witness excused)

5 MS. CROWLEY: Your Honor, the government calls Tsitsi  
6 Merritt.

7 TSITSI MERRITT,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 MS. CROWLEY: May I inquire, your Honor?

11 THE COURT: Sure.

12 DIRECT EXAMINATION

13 BY MS. CROWLEY:

14 Q. Good morning, Ms. Merritt.

15 A. Good morning.

16 Q. If I could just ask you to speak into the microphone so the  
17 court reporter can hear. Thank you.

18 A. Sure.

19 Q. Where do you live?

20 A. Harlem.

21 Q. And where are you from?

22 A. Zimbabwe.

23 Q. Are you still a citizen of Zimbabwe?

24 A. Yes.

25 Q. What do you do for a living?

HAC9RAH1

Merritt - direct

1 A. I'm a registered nurse.

2 Q. Do you have any children?

3 A. Yes.

4 Q. How many?

5 A. One.

6 Q. And is it a son or a daughter?

7 A. Son.

8 Q. How old is your son?

9 A. Eleven.

10 Q. Ms. Merritt, I'd like to direct your attention to  
11 September 17, 2016. Do you recall what you were doing that  
12 evening?

13 A. Yes.

14 Q. Could you tell -- could you describe it for us.

15 A. I was on my way with my friend in her car. I was a  
16 passenger. And my son was in the backseat. And we were on our  
17 way to Bed Bath & Beyond because we wanted to buy an airfryer.

18 We got turned around. We were actually -- we got  
19 lost. We couldn't make a left or a right, so we could only  
20 make a U-turn. So we made the -- we went to go down to Fifth  
21 Avenue and turned right back on -- we were still on west -- on  
22 23<sup>rd</sup>. And when we were waiting on the traffic light when --

23 Q. And what happened?

24 A. Then we heard like a loud sound. And the car we were in  
25 like kind of jumped and was shaking. What I would relate to as

HAC9RAH1

Merritt - direct

1 an earthquake. We heard people running and screaming. And we  
2 were not really sure like what it was.

3 Q. And did anything happen to the car?

4 A. Yes.

5 Q. What happened?

6 A. The windows -- my son was in the backseat. The backseat  
7 windows shattered onto him. And some of the -- the rearview  
8 mirrors was also damaged. And I'm not sure all the damage that  
9 was to the car.

10 Q. What kind of car was it?

11 A. It was a Toyota.

12 Q. What color?

13 A. White.

14 Q. After the car shook did you talk to your son?

15 A. Yes.

16 Q. And was he able to respond to you?

17 A. No.

18 Q. I'm sorry?

19 A. No.

20 MS. CROWLEY: Can you publish Government Exhibit  
21 1002-10.

22 Q. Ms. Merritt, do you recognize any of the cars that you see  
23 in this frame?

24 A. Yes.

25 Q. Which one?

HAC9RAH1

Merritt - direct

1 A. The white one. The small white car.

2 Q. In the back?

3 A. Yes.

4 Q. In the middle of the street?

5 A. Yes.

6 Q. And was that the car that you were in that night?

7 A. Yes.

8 MS. CROWLEY: We could play the video.

9 (Video played)

10 MS. CROWLEY: You can take that down.

11 Q. Take your time.

12 A. I'm sorry.

13 Q. That's okay. Let me know if you're ready to proceed.

14 A. Yeah.

15 Q. Are you okay?

16 A. Yes.

17 Q. Ms. Merritt, we saw the car drive away after the windows  
18 were knocked out. Who was driving the car?

19 A. Pauline, my friend.

20 Q. And where did she drive to?

21 A. She just drove over, past the traffic light because when  
22 the explosion happened she was like in some sort of a daze.  
23 And when I was calling her she was not really like answering me  
24 or responding appropriately. So I was just like just get out  
25 of here because we're not sure what it was. So she was able to

HAC9RAH1

Merritt - direct

1 drive. And then when we got to like I think it was like a  
2 steakhouse then she just was -- she just stopped the car there.  
3 She couldn't drive anymore.

4 Q. And what did you do after she stopped the car?

5 A. I was telling my son you're okay. Just calm down. You're  
6 okay. And I was trying to call her. We then tried to call --  
7 I think we actually called 911. I'm not sure if it was my  
8 phone or her phone. And I also ran into the steakhouse and I  
9 was trying to ask for help but it seems like nobody really  
10 could understand. They were just looking at me and nobody was  
11 taking any action. So I got back outside and that's when I saw  
12 like the police and everybody else with -- they were running  
13 eastbound, you know, towards where the explosion had happened.

14 MS. CROWLEY: Can we publish Government Exhibit

15 202-29A.

16 Q. Do you recognize this photograph?

17 A. Yes.

18 Q. Who is that?

19 A. That's me.

20 Q. And is that after you got out of the car?

21 A. Yes.

22 Q. What did you do after you left the steakhouse?

23 A. I was going back and forth just trying to flag somebody for  
24 help, you know, especially for my son. And I was just like --  
25 it was kind of hysterical.

HAC9RAH1

Merritt - direct

1 Q. Was your son able to get out of the car?

2 A. No.

3 Q. Was he eventually removed from the car?

4 A. Yes.

5 Q. How?

6 A. I picked him up and at some point I think the emergency  
7 responder took him from me.

8 MS. CROWLEY: Your Honor, the government offers  
9 Government Exhibit 202-29A.

10 THE COURT: I'll allow it.

11 (Government's Exhibit 202-29A received in evidence)

12 MS. CROWLEY: And if we could publish for the witness  
13 and the Court 202-29B.

14 Q. Do you recognize this photograph?

15 A. Yes.

16 Q. What do we see here?

17 A. That's my son.

18 MS. CROWLEY: Your Honor, the government offers  
19 Government Exhibit 202-29B.

20 THE COURT: I'll allow it.

21 (Government's Exhibit 202-29B received in evidence)

22 Q. Is this a photograph of a fireman carrying your son?

23 A. Yes.

24 Q. Where did he carry him to?

25 A. There was like a triage truck that was parked not too far

HAC9RAH1

Merritt - direct

1 from the ambulances like behind the FDNY ambulance. It was  
2 much bigger.

3 Q. And did you go inside that ambulance as well?

4 A. Yes.

5 Q. Were you treated for any injury in that ambulance?

6 A. Yes.

7 Q. What injuries?

8 A. Mostly head.

9 Q. Could you describe what you mean?

10 A. At that time my ears were ringing. A lot of vibration  
11 going on in my head. And basically I just felt like I had an  
12 alien head, like I couldn't really tell what was going on, but  
13 I felt like my head was just much heavier, and I couldn't  
14 really grasp how I was feeling as far as my head was concerned.

15 Q. Was your son also treated for injuries in the ambulance?

16 A. Yes.

17 Q. Were you eventually taken to the hospital?

18 A. Yes.

19 Q. Along with your son?

20 A. Yes.

21 Q. And were you both treated for injuries at the hospital?

22 A. Yes.

23 Q. When were you released from the hospital?

24 A. It was the next day, in the morning.

25 Q. And did you and your son receive any follow-up medical

HAC9RAH1

Merritt - direct

1 treatment after that?

2 A. Yes.

3 Q. For what?

4 A. We went for counseling and also went just for the follow-up  
5 for our ears and also like the -- whatever was going on with  
6 our head.

7 MS. CROWLEY: Thank you, your Honor. Nothing further.

8 THE COURT: Counsel.

9 MS. SHROFF: No, your Honor. We have no cross.

10 THE COURT: Thanks, Ms. Merritt. We'll excuse the  
11 witness. Thanks very much.

12 (Witness excused)

13 MS. CROWLEY: Your Honor, the government rests.

14 THE COURT: Ms. Shroff, do you need a minute or do you  
15 want to respond?

16 MS. SHROFF: Yes, please. Need a minute.

17 THE COURT: So we'll take a five-minute break.

18 (Continued on next page)

19

20

21

22

23

24

25

HAC9RAH1

Merritt - direct

1 (Jury not present)

2 THE COURT: Do you want time to yourself?

3 MS. SHROFF: We do, your Honor.

4 THE COURT: Let me know when you're ready.

5 MS. SHROFF: Sure.

6 (Recess)

7 MS. SHROFF: Your Honor, may we just approach for a  
8 minute.

9 THE COURT: Yes.

10 (At the sidebar)

11 MS. SHROFF: We're having the obvious question.

12 THE COURT: Whether he testifies or not?

13 MS. SHROFF: Right.

14 THE COURT: He wants to?

15 MS. SHROFF: Let's just say everybody is not on the  
16 same page. So if I could -- I know it's not --17 THE COURT: You've probably had this discussion  
18 before?

19 MS. SHROFF: Yes, but as you know how trials unroll.

20 THE COURT: Okay.

21 MS. SHROFF: I'm sorry about that.

22 THE COURT: No, no.

23 MS. SHROFF: So I just need --

24 THE COURT: It's a big issue.

25 MS. SHROFF: I don't know if you want to formally give

HAC9RAH1

Merritt - direct

1 him --

2 THE COURT: If he decides to testify, then I would  
3 talk to him without the jury just to make sure he understands  
4 that he doesn't have to, he's presumed innocent. If he does  
5 talk, you know, whatever he says can be used against him, be  
6 subject to cross-examination, the usual stuff. I just want to  
7 make sure that he knowingly --

8 MS. SHROFF: I just wanted to make sure if that's your  
9 practice.

10 THE COURT: I would do that if there's a dispute. If  
11 there is no dispute between him and counsel, so if you just say  
12 we call Mr. Rahimi, then I wouldn't do it. But if it's against  
13 your advice, then I would do that for a couple of minutes.

14 MR. BOVE: Your Honor, just so I understand. It's  
15 your practice that in the event the defendant elects not to  
16 testify, you would allocute him personally as to --

17 MS. SHROFF: No. That's not what he said. He said if  
18 there's a dispute between --

19 THE COURT: Counsel.

20 MS. SHROFF: -- the defense lawyer.

21 THE COURT: Counsel and the defendant.

22 MR. BOVE: I think that in light of the record that  
23 was just created here that there -- I think the phrase was not  
24 on the same page.

25 THE COURT: No. No. No.

HAC9RAH1

Merritt - direct

1 MS. SHROFF: It's a process.

2 THE COURT: It's fluid right now.

3 MS. SHROFF: Just wanted to let you know.

4 THE COURT: We've got the jury instructions. We're  
5 handing them out. They are very similar to the instructions  
6 that you submitted. I don't think it will take us long to go  
7 through them. The verdict sheet looks to be in good shape too.  
8 We made a couple of changes to that.

9 MS. SHROFF: Your Honor, was it the Court's thought  
10 that if Mr. Rahimi doesn't testify that the government -- that  
11 you're going to start summation, because then it would be  
12 broken up, right, the summations will not finish today.

13 THE COURT: Here's what I would like to do. Whether  
14 he does or doesn't, we would have the charge conference right  
15 away. I'm trying to figure out where that's going to lead us  
16 timewise. It would be advantageous to -- you can imagine a  
17 scenario where you could have both summations today assuming.

18 MS. SHROFF: But then they would have a rebuttal  
19 tomorrow.

20 THE COURT: I just don't know what the calendar is  
21 going to be. But I don't want to just have the jury here if I  
22 can avoid it for ten minutes, or whatever they were here for  
23 this morning, and then send them home for the day. That seems  
24 inefficient.

25 MS. SHROFF: So let me go back.

HAC9RAH1

Merritt - direct

1 THE COURT: Yes.

2 MS. SHROFF: Thanks.

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

hac6rah2

1 (In open court; jury not present)

2 THE COURT: Please be seated.

3 MS. SHROFF: Your Honor, he just needs a couple  
4 minutes.

5 THE COURT: Okay.

6 MS. SHROFF: Your Honor, in the mean time if we could  
7 be -- if we can -- sorry.

8 THE COURT: Ms. Shroff, have you made a decision as to  
9 whether you are going to put on a case or not?

10 MS. SHROFF: Mr. Rahimi needs to have five minutes on  
11 his own because he has had four lawyers talking to him. So I  
12 just want him to have that. Thank you.

13 (Pause)

14 MS. SHROFF: We're ready to go, your Honor.

15 THE COURT: Ms. Shroff.

16 MR. LARSEN: Your Honor, at this time we have a motion  
17 under Rule 29 for a judgment of acquittal. The government has  
18 failed to produce sufficient evidence of each element of each  
19 count and therefore we move for a judgment of acquittal.

20 MR. BOVE: Judge, the defendant's written confession  
21 alone touches upon just about each and every element. We also  
22 have offered evidence from victims who sustained personal  
23 injury. There is evidence of property damage.

24 The expert testimony certainly establishes that both  
25 the 23rd Street and the 27th Street devices meet the

hac6rah2

1 definitions of explosives, weapons of mass destruction, and  
2 destructive devices and it goes to the definitions we're  
3 talking about here. Put simply, and I am happy to elaborate  
4 if the Court would like, but we have met all the elements.

5 THE COURT: I also have not only reviewed the  
6 indictment but I went through my notes of the evidence and more  
7 recently I have been working on the jury instructions, which  
8 bring you to almost every element of the case, at least what  
9 the legal requirements are. So that application of Rule 29 is  
10 denied. There is ample evidence for the case to proceed to the  
11 jury.

12 Ms. Shroff, the next question is whether the defense  
13 is going to put on an affirmative case or not.

14 MS. SHROFF: We're not, your Honor.

15 THE COURT: That is the decision of Mr. Rahimi as  
16 well?

17 MS. SHROFF: That is the decision of Mr. Rahimi as  
18 well.

19 THE COURT: So I will call out the jury and I will ask  
20 you the same question and if you say that you are resting, then  
21 we'll take the next step.

22 MR. BOVE: Your Honor, we do ask that Mr. Rahimi be  
23 asked personally that he confirms that he understands he has a  
24 right to testify and that he is electing not to exercise that  
25 right.

hac6rah2

1                   THE COURT: I take Ms. Shroff's word for that. I  
2 don't think this is necessary if she says so, as she has, on  
3 behalf of Mr. Rahimi. They have just spoken for over an hour,  
4 I think, on this very subject. I assume that counsel is  
5 speaking for the defendant.

6                   Is that right, Ms. Shroff?

7                   MS. SHROFF: I appreciate the Court's understanding  
8 that we would be thorough and that is correct, your Honor, but  
9 thank you.

10                  THE COURT: We'll call the jury in.

11                  (In open court; jury present)

12                  THE COURT: Please be seated.

13                  We've been working during this last hour or so and now  
14 I am going to call on Ms. Shroff to ask her whether she has an  
15 affirmative case to put on or not.

16                  Ms. Shroff.

17                  MS. SHROFF: Thank you, your Honor. The defense rests  
18 at this time.

19                  THE COURT: So where that leaves us is we need a  
20 little time between now and I will give you a suggested time to  
21 go over the jury instructions between myself and counsel. Then  
22 we'll move to closing. It is about 11:00. I am going to give  
23 you until 1:00 to come back and have your lunch or whatever you  
24 want to do in that time and we'll pick up at 1:00.

25                  Thanks a lot.

hac6rah2

1 (Jury excused)

2 (In open court; jury not present)

3 THE COURT: Please be seated.

4 We have handed out jury instructions to counsel. I  
5 think they are quite similar to the joint instruction that I  
6 asked and you gave to us. There is also a joint verdict sheet.  
7 Why don't you take some time to look it over and then we'll  
8 have our charge conference, let's say, noon for the charge  
9 conference.

10 Does that work?

11 MR. BOVE: Yes. Thank you, Judge.

12 MS. SHROFF: That's fine, your Honor.

13 THE COURT: How I do the charge conference is as  
14 follows: I do it off the record so to speak initially. That  
15 is to say, we walk through all the instructions and the verdict  
16 sheet and at the end of that process if either side has an  
17 objection still to a particular instruction or phrasing or the  
18 verdict sheet, we call in the court reporter and allow  
19 everybody to lodge their objections on the record.

20 I will see you back here at 12:00.

21 MS. SHROFF: Your Honor, may we ask about the schedule  
22 on summation? I don't know the length of the government's  
23 summation. We would ask that either all three summations take  
24 place today. Or if the Court is inclined to break them up,  
25 that the government not have the rebuttal tomorrow.

hac6rah2

1 THE COURT: Let's see.

2 Do you have a sense of how long your summation might  
3 be?

4 MR. BOVE: I am going to try to shorten this up a bit,  
5 Judge, but I expect it to be three hours.

6 THE COURT: Three hours for the summation?

7 MR. BOVE: Yes, Judge.

8 MS. SHROFF: So then, your Honor, with all respect, I  
9 ask that the defense be allowed to sum up tomorrow.

10 THE COURT: Yes. We'll have to if the government is  
11 going to take three hours. There will not be time.

12 Do you have a three-hour summation as well?

13 MS. SHROFF: Three hours and one minute.

14 Kidding.

15 THE COURT: So the answer is yes. Even if we start  
16 precisely at 1:00, we'll be at 4:00. So we would break.

17 MS. SHROFF: After the length of their summation, we  
18 wouldn't want the rebuttal to be all alone on the following  
19 day.

20 THE COURT: I get it.

21 MS. SHROFF: Thank you.

22 THE COURT: In that case, we will do the defense  
23 summation first thing tomorrow morning and then rebuttal.

24 MS. SHROFF: And the charge.

25 THE COURT: And the charge.

hac6rah2

1 MS. SHROFF: That's fine.

2 THE COURT: Three-hour summation?

3 MS. SHROFF: I think Mr. Gamal summed up for three  
4 hours.

5 THE COURT: That wasn't me.

6 See if you can't trim it a little bit.

7 MR. BOVE: Very well, Judge.

8 THE COURT: I think less is always more in these  
9 circumstances.

10 MR. LARSEN: Your Honor, with permission, and I think  
11 we did this last week, but can we bring Mr. Rahimi back at 1:10  
12 to accommodate his prayer. It is something he can do in a  
13 couple minutes. I believe we did this last week.

14 THE COURT: Sure. 1:10 instead of 1:00.

15 MR. LARSEN: Yes.

16 THE COURT: Thank you.

17 There is one thing I wanted to add while you are here.  
18 I wanted to mention because it came to me from I don't remember  
19 who but I think there was some concern about--

20 MS. SHROFF: Your Honor, Mr. Rahimi is no longer --

21 THE COURT: Yes, he is.

22 MS. SHROFF: I couldn't see him.

23 THE COURT: That there was some concern about family  
24 members not being in the audience on one day of this week. I  
25 cannot remember. I just want everybody to know that the court

hac6rah2

1 is wide open. Anybody can come in. Any age can come in. They  
2 are welcome to do that. The only requirement is that everybody  
3 follow the rules and decorum of the courtroom. Sometimes that  
4 is difficult for small children. I know that, but nevertheless  
5 we ask the guardian, whoever the guardian is with the child, to  
6 observe the decorum. And if the child needs to go out or needs  
7 to go to the bathroom or needs a drink, etc., instead of the  
8 Court saying that, because it can be a bit distraction to  
9 others in the courtroom, we ask the guardian to exercise good  
10 judgment in that regard. You know, for example, that there is  
11 also an overflow courtroom for this case. Sometimes that is a  
12 good alternative for people who need to get up and get out  
13 because there is no proceeding that is being disturbed.

14 So it is clear when we had a conversation the other  
15 day in the courtroom, it is on the record, it is in the  
16 transcript of October 10, and what I said to counsel at the  
17 side bar was: So I am going to ask defense counsel, probably  
18 you Ms. Shroff, to talk to Ms. Peggy Cross-Goldenberg -- who is  
19 a member of the defense team by the way -- and who I think is  
20 accompanying some family members in the audience with very  
21 small children here, and I don't know if they are related to  
22 your client or not, but could you just ask her to pass along  
23 what the normal decorum practices are in court.

24 That is the heart of what I suggested.

25 Anyway I will see you at 1:10.

hac6rah2

1                   By the way, I will see counsel at noon.

2                   MR. BOVE: Thank you, Judge.

3                   (Recess)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

HAC9RAH3

1 (Jury not present)

2 THE COURT: I'm just going to go over the charges and  
3 if anybody feels they want to lodge an objection they can to  
4 the changes that are being made or not being made.

5 So in some instances I'm going to probably say one  
6 side asked for it and -- anyway, you'll see.

7 The point here is that we had the conversation which I  
8 typically do without the reporter and this gives each side the  
9 opportunity to state an objection they might have.

10 So the first -- so there's a comment on page nine  
11 which I'm going to skip for now and come back to in a minute.

12 So there's a suggestion on page ten, line four. I  
13 think it was the defense that suggested we change "should" to  
14 "may." I'm not making that change. I take it that's an  
15 objection from the defense.

16 MR. LARSEN: Yes, your Honor. Even if the jury  
17 doesn't have to be instructed of its power to nullify it always  
18 has that power. So we think the word should be "may."

19 THE COURT: I got it.

20 Both parties asked that we insert a request no. 34  
21 from the joint proposed instructions. I think we don't need it  
22 all. So what I propose to do on page 14 is to insert the  
23 following sentence at the end of the first full paragraph where  
24 we talked about you infer. And I'm proposing to add from the  
25 joint instruction just the sentence that says "an inference is

HAC9RAH3

1 a logical, factual conclusion which you might reasonably draw  
2 from the other facts that have been proved." I think the other  
3 concepts are already in the charges. But, in any event, do you  
4 both object to that or is that okay with both of you if I make  
5 that change?

6 MR. DeFILIPPIS: Fine with the government, your Honor.

7 MR. LARSEN: Your Honor, we would just add the  
8 sentence that immediately precedes the sentence which your  
9 Honor just read "the matter of drawing inferences from facts in  
10 evidence is not a matter of guesswork or speculation."

11 THE COURT: So we talk about guesswork and speculation  
12 in the circumstantial evidence section I think. That's why I  
13 didn't put it in here.

14 So you can lodge an objection if you like to that.

15 MR. LARSEN: We do.

16 THE COURT: Okay.

17 The proposed by the defense insertion on page 16 after  
18 the first full paragraph to define "use" to mean to detonate.  
19 I'm not making that change. So that probably is over the  
20 defense objection. Is that right?

21 MR. LARSEN: Yes, your Honor. The charges here allege  
22 the use of a bomb against persons and property. And we think  
23 the clear reading of the word use in the statute and certainly  
24 in the indictment means to detonate. That's especially  
25 necessary since the instruction does define the other terms in

HAC9RAH3

1 the statute and use is a term, as it's been alleged in this  
2 case, Mr. Rahimi is charged with either detonating or  
3 attempting to detonate a bomb.

4 THE COURT: Do you want to be heard?

5 MR. DeFILIPPIS: Your Honor, as we pointed out in the  
6 conference, to detonate is a far narrower set of activities  
7 than the statute encompasses, not only because the words of the  
8 statute are broader but also because, as used in this trial,  
9 the word detonate was a very specific industry term that refers  
10 to only one type of explosion. And as we explained to your  
11 Honor, it's simply inaccurate.

12 THE COURT: So you want to leave it the way it is?

13 MR. DeFILIPPIS: Correct, your Honor.

14 THE COURT: So I'm doing that. It will be over the  
15 defense objection.

16 Then defense raised an objection on page 18. The  
17 second full paragraph which says "If you find, then the element  
18 is satisfied." That comes up about ten times or more, that  
19 kind of language. So what I propose to do is add a sentence  
20 that says, "Conversely, if you don't find, then the element is  
21 not satisfied." So that balances out, I think. Is that okay  
22 with you?

23 MR. LARSEN: Yes, Judge.

24 THE COURT: Is that okay with you?

25 MR. DeFILIPPIS: Your Honor, that's fine.

HAC9RAH3

1                   THE COURT: So that comes up again twice on page 19.  
2 Comes up again on page 21.

3                   On page 22 the defense asks that I insert at the end  
4 of the third full paragraph the phrase "in the vicinity of West  
5 23<sup>rd</sup> Street". I believe that's a correct statement and I  
6 propose to do that. Is that over your objection?

7                   MR. DeFILIPPIS: Yes, your Honor. The government  
8 believes that in reciting the elements of the statute inserting  
9 the government's factual theory is not appropriate.

10                  THE COURT: And I'm doing that also at the defense  
11 request on page 23 at the end of the second full paragraph,  
12 same terminology, "in the vicinity of West 23<sup>rd</sup> Street." Is  
13 that all right with you?

14                  MR. LARSEN: Yes, Judge.

15                  THE COURT: Same opposition?

16                  MR. DeFILIPPIS: Yes, Judge.

17                  THE COURT: Then on page 24 and page 25 and page 26  
18 I'm adding that same "conversely" language. Also on 27. And  
19 29. And 30.

20                  So the defense had a suggestion for page 36 which I am  
21 adopting and that is three lines up from the bottom, after the  
22 phrase "then you are" it now reads "not to decide Count Seven."  
23 I'm adopting the defense suggestion that I insert "required to  
24 return a verdict of not guilty on Count Seven." I don't know  
25 if the government is objecting to that or not.

HAC9RAH3

1 MR. DeFILIPPIS: No, your Honor.

2 THE COURT: Okay. That comes up again on the top of  
3 page 38, the very first line, instead of the phrase "not to  
4 decide Count Eight," "required to return a verdict of not  
5 guilty on Count Eight." Is that okay with the defense? That's  
6 what you had in mind, right?

7 MR. LARSEN: Yes, Judge.

8 THE COURT: And the government is not opposed.

9 So defense has suggested on page 41 at the end of the  
10 first paragraph, not a full paragraph but a carryover  
11 paragraph, where this was -- I think this was a defense  
12 suggestion, that I add "except as I previously instructed you  
13 with regard to Counts Seven and Eight." I forget whose  
14 suggestion that was. I think it's a good one though. Is that  
15 okay?

16 MR. LARSEN: Yes, Judge.

17 MR. DeFILIPPIS: Your Honor the government would  
18 prefer to leave it as is.

19 THE COURT: So this is, though, the concept as you  
20 know -- well, okay. That's fine.

21 So the government proposed adding what's called a  
22 persons-not-on-trial paragraph. I don't think it fits here.  
23 So I'm proposing not to do that. Is that over the government  
24 objection?

25 MR. DeFILIPPIS: Yes, your Honor. We think there were

HAC9RAH3

1 several persons mentioned during the course of the trial that  
2 warrant that instruction.

3 THE COURT: And what does the defense think?

4 MR. LARSEN: We agree with the Court.

5 THE COURT: Similar acts. There was a proposal to  
6 change this instruction. This is the instruction that I gave  
7 earlier I believe in this case, in fact, so I'm sticking with  
8 the same language and not making a change to similar acts. Is  
9 that okay with you?

10 MR. LARSEN: Yes.

11 THE COURT: And you have -- you still want to add to  
12 that?

13 MR. DeFILIPPIS: Your Honor, I don't believe we asked  
14 for any change on the similar acts.

15 THE COURT: Good. I thought somebody had.

16 The particular investigative techniques language I'm  
17 going to leave as it is. I think it may have been the  
18 government that proposed some addition to that. But I think it  
19 works as it is. Is that okay with the defense?

20 MR. LARSEN: Yes.

21 THE COURT: How about the government?

22 MR. DeFILIPPIS: Yes, your Honor. As we pointed out,  
23 we would prefer the full instruction that we proposed which  
24 references the fact that the government is not on trial and  
25 that law enforcement techniques are not at issue because the

HAC9RAH3

1 defense opened on that and it has been raised during the course  
2 of the trial.

3 THE COURT: At the bottom of page 44, the stipulation  
4 of facts, deleting reference to testimony. There were no  
5 stipulations of testimony. That carries over to page 45.

6 I'm deleting also the instruction, defendant's  
7 testimony. There was no testimony and there need not be.

8 Over the objection, I believe this is of the defense,  
9 on page 46 I'm leaving in the instruction, "Punishment is not  
10 to be considered by the jury." I said that earlier in the  
11 preliminary instructions. Would that be over your objection?

12 MR. LARSEN: Yes, Judge.

13 THE COURT: And how about the government?

14 MR. DeFILIPPIS: The government believes that  
15 instruction is appropriate, your Honor.

16 THE COURT: I'm leaving in the evidence obtained  
17 pursuant to search objection. I think that was objected to by  
18 the defense; is that right?

19 MR. LARSEN: Yes.

20 THE COURT: How about the government?

21 MR. DeFILIPPIS: Your Honor we were fine with that  
22 instruction. We think it's appropriate.

23 THE COURT: I'm also leaving in the sympathy oath as  
24 jurors instruction. Did you want to change that?

25 MR. DeFILIPPIS: The government does not, your Honor.

HAC9RAH3

1                   THE COURT: Did you want to change that? You wanted  
2 that deleted, I think?

3                   MR. LARSEN: Correct.

4                   THE COURT: So here on page 50 is the same issue on  
5 line two, verdict should be guilty as opposed to verdict may be  
6 guilty. I'm going to leave it as it is. And that is over the  
7 defense objection, I think, correct?

8                   MR. LARSEN: Yes, Judge.

9                   THE COURT: How about the government?

10                  MR. DeFILIPPIS: The government prefers to leave it as  
11 it is, as your Honor suggested.

12                  THE COURT: So those are the instructions.

13                  There's unanimity on the verdict sheet. So we won't  
14 change that.

15                  Returning to page nine. For the moment you can assume  
16 that that instruction is not changing but I'm still looking at  
17 that. So I know the defense wants a change, delete the word  
18 "or suspicion," is that right, and the government wants to  
19 leave it as it is.

20                  MR. DeFILIPPIS: Correct, your Honor.

21                  THE COURT: So assume, unless you hear from me, that  
22 it will remain the way it is. If there's a change I will let  
23 you know.

24                  MR. LARSEN: Thank you, Judge. Just one final point  
25 on the inference instruction. I believe the Court said --

HAC9RAH3

1 THE COURT: What page now?

2 MR. LARSEN: This will be inserted as agreed upon.

3 THE COURT: Insertion -- I've lost the page.

4 MR. LARSEN: I'm -- I believe it was 14.

5 THE COURT: I have the rider anyway.

6 MR. LARSEN: Yes. Because we had requested that the  
7 preceding sentence about inferences not being a matter of  
8 guesswork or speculation be added, and I believe the Court said  
9 that that's stated in the circumstantial evidence charge, but I  
10 don't believe that it is. It may be elsewhere in the charge,  
11 and we'll review it during the government's summation. But we  
12 do think it's critical that if we're going to instruct the jury  
13 on inferences we have to make clear that inferences are not a  
14 matter of guessing or speculating.

15 THE COURT: You wanted that whole instruction in so  
16 you're probably okay with that too?

17 MR. DeFILIPPIS: We did, your Honor. So we wouldn't  
18 object.

19 THE COURT: So we'll add that sentence just before --  
20 immediately before the sentence that I was proposing to add.

21 MR. DeFILIPPIS: We're not going to object to that,  
22 your Honor.

23 MR. LARSEN: Thank you.

24 THE COURT: There is one other thing. There's a page  
25 here which identifies the experts. Is there anybody that was

HAC9RAH3

1 left out?

2 MR. DeFILIPPIS: No.

3 THE COURT: Great. Thanks. We're good to go.

4 So are the people here briefly for the McLeod case;  
5 and if so, if you could meet me in the robing room with the  
6 court reporter. As soon as I finish that, I'll come back out  
7 and we'll start with the government's summation.

8 (Continued on next page)

9 THE COURT: Just one addendum. I did review the  
10 reasonable doubt instruction. I'm going to leave it the way it  
11 exists. It's compatible with the Pattern Jury Instructions.12 So we will call in the jury and hear the government's  
13 summation.

14 (Continued on next page)

15

16

17

18

19

20

21

22

23

24

25

HAC9RAH3

Summation - Mr. Bove

1 (Jury present)

2 THE COURT: Please be seated everybody. We'll start  
3 with the summations and the government typically goes first.  
4 So we'll call on Mr. Bove for that.

5 MR. BOVE: Thank you, your Honor.

6 THE COURT: You bet.

7 MR. BOVE: May I proceed, Judge?

8 THE COURT: Yes.

9 MR. BOVE: Good afternoon, ladies and gentlemen.

10 JURY: Good afternoon.

11 MR. BOVE: Last September a bomb went off at a charity  
12 race on a Saturday morning in New Jersey. Less than twelve  
13 hours after that a second bomb went off outside a home for the  
14 disabled on 23<sup>rd</sup> Street in Manhattan. Two hours later a  
15 third bomb was found less than four blocks away on 27<sup>th</sup>  
16 Street planted near an outdoor hotel and a hotel right next to  
17 it encased in glass.18 The FBI rushed to these scenes and so did the first  
19 responders. And by some miracle no one was killed. And as the  
20 victims were treated, as the dust settled, as debris was  
21 cleared from the streets, a series of questions emerged. Who  
22 did these things? How? And why?23 Now that you have seen and heard all of the evidence  
24 at this trial you know the answers to those questions. Who did  
25 these things? This man did these things. The defendant, Ahmad

HAC9RAH3

Summation - Mr. Bove

1 Khan Rahimi, conducted these bombings.

2 How did he do it? He bought bomb parts. He followed  
3 terrorist blueprints. He built bombs in his home. And he  
4 carried out this attack in a cold, calculated way with evil in  
5 his heart beginning at about 5 a.m. on Saturday, September 17,  
6 2016. Why did he do it --

7 THE COURT: Mr. Bove, you can come back up to the  
8 podium.

9 MS. SHROFF: Thank you, your Honor.

10 MR. BOVE: You know why he did it. Because he wrote  
11 it down. He wrote it down in advance in an open letter  
12 directed to the U.S. Government that he knew would be found  
13 after his attack. In that letter the defendant described his  
14 terrorist motivations, his deadly intent, and his plans for the  
15 bombs. That letter is a claim of responsibility for this  
16 attack. Because the defendant was proud of his bombs. He was  
17 proud of his plan. He wanted credit for his acts of war.

18 These are some of the things that the defendant said  
19 in that letter. *Inshallah*. God willing. The sounds of the  
20 bombs will be heard in the streets. Gunshots to your police.  
21 Death to your oppression.

22 This letter is more than a claim of responsibility.  
23 It is a written confession. And it is one of the reasons that  
24 you know that the defendant committed these crimes.

25 But, ladies and gentlemen, that's not the only

HAC9RAH3

Summation - Mr. Bove

1 evidence, not by a long shot. You know from the surveillance  
2 video that the defendant conducted these bombings. You know  
3 from the evidence of his fingerprints, and his DNA that he did  
4 this. You know from his purchases at Amazon, Home Depot, and  
5 eBay that he conducted this attack. And you know from the bomb  
6 instructions and the terrorist propaganda on his laptop, and  
7 his iCloud account that he did the this.

8 All of the evidence shows you that the defendant  
9 conducted this attack. An attack on the United States, an  
10 attack intended to kill Americans. And an attack designed to  
11 terrorize this city.

12 All of the evidence shows that the defendant planned  
13 this attack for months. He researched bombs. He built them.  
14 And he tested them.

15 And all of the evidence also shows that he carried out  
16 the attack on September 17 with tactical precision. You  
17 watched a lot of that on video as he carried the bombs through  
18 the streets of this city.

19 You watched him make three pauses on his way down to  
20 23<sup>rd</sup> Street. First outside Penn Station. Second, at a bus  
21 stop on Eighth Avenue for about 20 minutes. And third, on the  
22 steps of a church on 23<sup>rd</sup> Street right near where he planted  
23 that bomb.

24 He made those stops, ladies and gentlemen, because he  
25 was on a schedule. He had already set the alarms on the

HAC9RAH3

Summation - Mr. Bove

1 cellphones that he was using as the detonators. But each time  
2 he stopped he watched crowds of New Yorkers walk by. He  
3 watched them and he wanted to kill them. He wanted to maximize  
4 the death, the devastation, and the destruction caused by this  
5 attack.

6 In order to achieve that objective the defendant chose  
7 soft targets, defenseless locations, vulnerable victims.  
8 People like unsuspecting runners at a charity race. The  
9 residents at Selis Manor on 23<sup>rd</sup> Street. People like Vicky  
10 Feria, Cort Cheek, Mary West and her dog Judy. He chose that  
11 outdoor restaurant and he chose the hotel. All on the week of  
12 the United Nations conference that Eric Ward told you about,  
13 one of the busiest times of the year in the city for  
14 international visitors and for business at hotels and inns.

15 Now, Ms. Crowley told you at the beginning of this  
16 trial that people that the defendant targeted had no idea what  
17 was coming. They could not protect themselves from this man's  
18 bombs. Only a series of acts of grace saved these people's  
19 lives. Interventions by someone or something completely  
20 independent of that man's terrorist etiology and his violent  
21 intent. Americans.

22 Now, you heard from some of the victims of this crime  
23 and you watched some of their experiences on video. Sprinting  
24 from the blast. Glass crashing around them. Bleeding from  
25 shrapnel. Clinging to their children. Trying to protect their

HAC9RAH3

Summation - Mr. Bove

1 loved ones, their families.

2 You heard powerful stories of courage during this  
3 trial. New Yorkers bent but they did not break in response to  
4 this attack.

5 Now I want to pause here and I want to be candid with  
6 you right upfront. There are going to be times today when I  
7 don't have words to summarize some of the evidence that you saw  
8 relating to this attack. Cort Cheek made this point last week  
9 when he said that nothing compares to what happened to him that  
10 night. I know that you remember what the victims said and how  
11 they said it.

12 These people are clearly still impacted now by what  
13 this man did that night. Mary West told you that directly and  
14 it could not have been more obvious from Arkeida Wilson's body  
15 language on that witness stand that even today she's haunted by  
16 what happened that night.

17 And I have no words for the video that you saw of  
18 Ms. Wilson and her friends walking into the defendant's bomb on  
19 23<sup>rd</sup> Street as it went off.

20 But the defense chose some words. They chose some  
21 words to describe the evidence in this case. That happened  
22 during opening statements. And the words they chose were  
23 "tiresome" and "repetitive." Here's the transcript is up on  
24 the screen now of what was said during opening statements.

25 Now the defendant has no burden at this trial. He's

HAC9RAH3

Summation - Mr. Bove

1 presumed innocent. We bear the burden. We do is so proudly  
2 and we must prove that the defendant committed these crimes  
3 beyond a reasonable doubt.

4 But when the defense speaks you're entitled to listen,  
5 scrutinize what they say, think about whether it makes sense,  
6 it's consistent with what you're seeing and hearing at the  
7 trial.

8 And so here they did choose to speak and these are the  
9 words they chose: "tiresome, repetitive."

10 Now, it's natural for the government and the defense  
11 lawyers to disagree during the course of a criminal trial. Of  
12 course. And I think this might have to be one of those times.  
13 Because I submit to you that there was nothing tiresome about  
14 the proof that you have heard over the last week-and-a-half.  
15 And you have been attentive jurors. We have watched you pay  
16 careful attention throughout this trial. We thank you and we  
17 appreciate the effort so far.

18 So think about it. Was it tiresome to hear from the  
19 defendant's victims? Was it tiresome to hear from people like  
20 Eric Ward and Adam Krell who told you about how the defendant's  
21 bomb ripped through 23<sup>rd</sup> Street destroying buildings and  
22 businesses?

23 Was it tiresome to hear from law enforcement witnesses  
24 who told you about how they rushed to these scenes, worked 24/7  
25 to collect evidence of the defendant's bombs so they could be

HAC9RAH3

### Summation – Mr. Bove

1     || presented to you at this trial?

Was it tiresome to review the evidence of the terrorist propaganda and the bomb making instructions on this man's laptop and in his iCloud account?

5 Did you find it tiresome to hear from bomb technicians  
6 who diffused bombs left by the defendant at the crime scenes in  
7 this case, men like Detective Hallik who went to 27<sup>th</sup> Street,  
8 recovered the defendant's bomb, diffused it, made it safe,  
9 protected the city, and preserved that evidence so that you  
10 could see it during this trial? Was that tiresome?

11 Now you can be sure that the defendant wishes you  
12 hadn't seen and heard all that evidence because it proves that  
13 he did these things. But tiresome? I think not.

14 Now there's a little bit of room for common ground, a  
15 potential agreement between the defense and I on the issue of  
16 whether the evidence was repetitive because when you go to a  
17 trial and in the first two hours you're presented with the  
18 defendant's ringing confession, it's pretty clear, as it was  
19 here, that this is not a close case. But there was more  
20 evidence. A lot more.

21 Let's talk about the video. Ladies and gentlemen,  
22 there's not just one video in evidence of the defendant  
23 committing this crime. There are 45 videos from September 17  
24 of 2016 of the defendant carrying these bombs around. That's  
25 just one day.

HAC9RAH3

Summation - Mr. Bove

1           There are twelve more videos the next day as he walked  
2 around Penn Station and back to New Jersey with a backpack full  
3 of six more bombs.

4           So maybe the evidence is repetitive in the sense that  
5 the defendant was repeatedly caught on video committing this  
6 crime.

7           Let's talk about the fingerprints. There's not just  
8 one fingerprint identified to the defendant in this case on the  
9 evidence. There are more than 40. There are over 20  
10 fingerprints from that man on the bombs. So maybe the evidence  
11 is repetitive in the sense that the defendant repeatedly  
12 touched these bombs as he designed and built them and that  
13 proof has been presented to you now.

14           How about the DNA? Well after you've heard that the  
15 defendant has a written confession, is caught on video, after  
16 you've heard about the fingerprints, maybe it's a little  
17 repetitive to learn -- certainly not surprising -- that his DNA  
18 is on the cellphones that he used as bomb detonators, a bomb  
19 detonator at Seaside and a bomb detonator for the bomb he left  
20 at 27<sup>th</sup> Street.

21           But think about what that forensic evidence means,  
22 ladies and gentlemen. That shows you that the defendant -- he  
23 didn't just carry these bombs around in bags like you saw on  
24 the video. That's not all he did. The fingerprints and the  
25 DNA prove to you that he made the bombs because his

HAC9RAH3

Summation - Mr. Bove

1 fingerprints and DNA are on the components. The fingerprints  
2 are inside the cellphones. That shows you that the defendant  
3 designed these things, he built them, and because he did those  
4 two things you know that he understood their destructive  
5 potential. He knew that he had built deadly devices. He  
6 intended to kill people with those devices.

7 So, ladies and gentlemen, tiresome and repetitive are  
8 not the words that I would have chosen. That's not a fair  
9 accurate -- that's not a fair summary of what the evidence has  
10 shown or the way it's come in at this trial. And the words  
11 that I'm going to ask you to focus on during my closing  
12 statement today are the ones I started with. Who? How? And  
13 why?

14 I'm going to ask you to think about those questions as  
15 I talk about the evidence. Because this is my opportunity to  
16 show you how it all fits together. The evidence came in during  
17 the trial in bits and pieces. Not always chronologically. And  
18 this is my chance to walk you through it step by step. And I  
19 ask that as I do that you keep these questions in mind. Who?  
20 How? And why?

21 And if you do that, and you continue to pay careful  
22 attention to the evidence, then I submit to you that at the end  
23 of your deliberations after you've listened to all the  
24 summations, listened to Judge Berman's instructions, I submit  
25 to you that only one word will suffice, only one word will be

HAC9RAH3

Summation - Mr. Bove

1 appropriate. Guilty. The defendant is guilty. He is guilty  
2 beyond a reasonable doubt and he is guilty of each and every  
3 charge in the indictment.

4 So this is a little roadmap for what I plan to cover  
5 during the rest of my closing statement. We're going to talk  
6 about the evidence. We're going to start with the defendant's  
7 letter, talk about what that means.

8 Next I'm going to talk a little bit about the evidence  
9 of his radicalization. When I say that what I mean is the  
10 evidence that the defendant started to think about jihad, holy  
11 war against the United States. He started to pursue martyrdom.  
12 He wanted to die in a terrorist attack. You've seen that  
13 evidence that it dates back to 2012.

14 Then we're going to discuss how he planned the attack.  
15 That process started in at least May of 2016 with that Home  
16 Depot surveillance video that you saw. And so we're going to  
17 walk through that proof.

18 Next we'll talk about the attack itself. We'll start  
19 at 5 a.m. on September 17 and move forward as the defendant  
20 planted the bombs in Seaside, 23<sup>rd</sup> Street, 27<sup>th</sup> Street, and  
21 then back at the Elizabeth Train Station.

22 Next we'll talk about the evidence that was picked up  
23 after his arrest, a little bit more about the letter, but  
24 perhaps more importantly at that point in the closing the  
25 things that were found at his house at 104 Elmora Avenue.

HAC9RAH3

Summation - Mr. Bove

1                   After that we're going to talk in more detail about  
2 the bombs themselves. I'm going summarize for you some of the  
3 evidence that you heard over the last two days from the people  
4 from the Quantico lab, the experts.

5                   After we've talked about the evidence I'm going to  
6 finish by talking about each of the eight charges.

7                   Before we get there I will give you a little preview.

8                   The charges in the indictment are basically arranged  
9 in three categories. There are three charges that relate to  
10 the 23<sup>rd</sup> Street bomb. Count One charges the defendant with  
11 using a weapon of mass destruction. Count Three charges him  
12 with bombing a place of public use. And Count Four charges him  
13 with destruction of property by explosive.

14                  Judge Berman is going to give you the instructions on  
15 the law. That controls no matter what I say today. And he's  
16 also going to give you a verdict sheet that will help guide  
17 your deliberations. But as I talk about the evidence please  
18 keep in mind that this is the first category of charges.

19                  The second category of charges relates to the 27<sup>th</sup>  
20 Street bomb. So Count Two charges the defendant with use and  
21 attempted use of a weapon of mass destruction. And Count Five  
22 charges the defendant with attempted destruction of property by  
23 explosive.

24                  Now, it's clear, ladies and gentlemen, the bomb at  
25 27<sup>th</sup> Street didn't go off. But the defendant clearly

HAC9RAH3

Summation - Mr. Bove

1 designed it to. He designed it to go off. He designed it to  
2 kill people. And he designed it to destroy property. Those  
3 were his intentions when he left that device near the mailbox  
4 on 27<sup>th</sup> Street. And it's no defense for him that the bomb  
5 was exposed, found by Jane Schreibman, 911 was called and that  
6 the NYPD was able to diffuse that bomb. That's because Counts  
7 Two and Five, these 27<sup>th</sup> Street counts, charge attempts.

8 I expect that Judge Berman will instruct you that the  
9 defendant is guilty of an attempt if he intended to commit the  
10 crime and if he took a substantial step towards committing it.  
11 And you know that he did both of those things. He designed  
12 that bomb to kill. He knew it would work. He knew it would  
13 work because the Seaside bomb had gone off and the 23<sup>rd</sup>  
14 Street bomb had gone off. His bomb making plans worked. He  
15 knew that when he put the 27<sup>th</sup> Street bomb there.

16 And he did not take just one substantial step. He  
17 took many. He took many steps all the way to 27<sup>th</sup> Street and  
18 he took many steps in building that bomb. He left it there  
19 that night fully capable of exploding and intending that it  
20 would explode. And that's what matters, I submit to you, for  
21 the 27<sup>th</sup> Street charges.

22 Now the last set of charges relate to the  
23 transportation, use, and possession of these bombs. Separate  
24 and apart from the bombing that happened that the defendant  
25 conducted at 23<sup>rd</sup> Street and the one that he attempted to

HAC9RAH3

Summation - Mr. Bove

1 conduct at 27<sup>th</sup> Street, he created grave dangers by carrying  
2 these bombs around, including in Manhattan, grave dangers for  
3 all of the people who were on the street that night as he made  
4 his way down Eighth Avenue and all of the people that were  
5 still on the street as he went from 23<sup>rd</sup> to 27<sup>th</sup> Street.

6 He walked those bombs through busy Penn Station. You  
7 know that those bombs could have gone off at any moment because  
8 you heard about their contents. You heard this morning from  
9 Special Agent DeFusco about the HMTD, that highly volatile  
10 primary explosive that was packed in the 27<sup>th</sup> Street device.  
11 Bombs could have gone off at any time just because of the  
12 explosives the defendant made. And because of that, he's  
13 charged with these additional crimes relating to having carried  
14 them around.

15 There is no miracle defense here, ladies and  
16 gentlemen. It's not a defense that no one died. It's not a  
17 defense that the bombs didn't go off while the defendant  
18 transported them to 23<sup>rd</sup> Street and 27<sup>th</sup> Street. And it's  
19 not a defense that the 27<sup>th</sup> Street bomb was diffused before  
20 it could explode.

21 The law prohibits attempted bombings and  
22 transportation of bombs and certain types of explosives because  
23 the risks that these activities create are simply unacceptable.  
24 They can't be tolerated. And because the defendant created  
25 those additional risks when he transported the bombs, he is

HAC9RAH3

Summation - Mr. Bove

1 guilty of these additional charges in that third category.

2 So with that preview let's talk about the evidence  
3 and, as I said, we're going to start with his letter.

4 This is page one of the letter and right in the  
5 introduction the defendant makes clear this is about a conflict  
6 between good and evil. You can see that in the top box.

7 The next line, ladies and gentlemen, is how you know  
8 that this was an attack that was designed to target the United  
9 States and Americans in the city. The letter is directed in  
10 writing to you, USA government, and it makes an accusation  
11 about slaughter of Mujahideen. And you know what that word  
12 means from Mr. Fouad. It means people engaged in jihad.

13 On page two the defendant makes a reference to Anwar  
14 al-Awlaki. Says Anwar al-Awlaki has spoken the truth. And you  
15 know who al-Awlaki is from Aaron Zelin. He was one of the  
16 senior leaders of al-Qaeda in the Arabian Peninsula. He gave  
17 lectures and promoted attacks on American civilians. Some of  
18 the parts of the transcript are here on the screen. Zelin told  
19 you that al-Awlaki was putting out messages online calling for  
20 jihad against the United States.

21 And why are we talking about this right now? Because  
22 these are the names, this is one of them, of the people who the  
23 defendant included in his letter. These are the people who the  
24 defendant found motivating, whose guidance he found, in his  
25 word, clear. These people and their messages explain what the

HAC9RAH3

Summation - Mr. Bove

1 defendant intended by this attack. Evidence of the defendant's  
2 motive comes from them and helps to explain why he did what he  
3 did.

4 You also learned about *Inspire* magazine at this trial,  
5 a publication by al-Qaeda in the Arabian Peninsula by the same  
6 organization that al-Awlaki was affiliated with. And this is  
7 an issue that was found on the defendant's laptop. It's the  
8 first issue of the magazine by AQAP. And al-Awlaki was one of  
9 the guest speakers, guest writers. And what does he say?  
10 That's in the bottom image here, "We will bomb and we will  
11 assassinate." This is the message that the defendant found  
12 persuasive. This is what drove him in conducting the attacks  
13 that he did.

14 A little bit further down on page two the defendant  
15 gave an example of someone who conducted the type of attack  
16 that he would later emulate. He gives the example of Nidal  
17 Hasan. It says al-Awlaki has spoken the truth. Stay behind  
18 and fight like Nidal Hasan. And you know from Mr. Zelin who  
19 Hasan is.

20 Hasan conducted an attack in Texas in 2009. He killed  
21 13 people and injured up to 30 more in an attack with a rifle.  
22 This is a lone wolf attack, just like the one that the  
23 defendant committed. And you can tell from the letter that  
24 these are the types of things he was thinking about as he put  
25 his plan together.

HAC9RAH3

Summation - Mr. Bove

1                   Hasan was actually praised in *Inspire* magazine for the  
2 lone wolf attack that he committed. What do you have to offer  
3 to the lone Mujahid? You're asking about the past, I believe  
4 that through *Inspire* we have passed the idea and tried to  
5 support it. The idea of these lone wolf attacks. The  
6 defendant was reading *Inspire* magazine. He downloaded it to  
7 think about what steps he wanted to take in support of his  
8 jihad and he chose to follow the example of Nidal Hasan.

9                   Page three of the letter. Let's start at the top of  
10 the page. There's a reference to the FBI and Homeland  
11 Security. Basically what this says, ladies and gentlemen, is  
12 that the defendant got concerned at some point that he was  
13 under surveillance. He was concerned that law enforcement was  
14 watching him. And then he explained what he did after that  
15 concern arose. He prayed that jihad would not be taken away  
16 from him. He begged for shahadat, for martyrdom.

17                   So what does this mean? It means that the defendant  
18 was worried that he was going to be arrested before he could  
19 conduct this attack. He became concerned that law enforcement  
20 was watching him so he had to take some steps to try and avoid  
21 being arrested so he could carry this out. The defendant never  
22 planned to fully get away with this. He wanted to claim  
23 responsibility for it. But he was also worried that law  
24 enforcement would stop him before he did it.

25                   Next page of the letter the defendant talks about

HAC9RAH3

Summation - Mr. Bove

1 going back to sham. You know from Mr. Zelin that that's a  
2 reference to ISIS, ISIS controlled territory.

3 So the defendant here is describing some interest in  
4 going to fight overseas; that he was thinking about going to  
5 fight with a terrorist organization abroad. But this incident  
6 when he got concerned that law enforcement was watching him, it  
7 caused him to think that maybe I can't travel. Maybe I won't  
8 make it that far.

9 And so in the next paragraph he says I looked for  
10 guidance and guidance came. Again, from al-Awlaki. And then  
11 he includes a second name brother Adnani, who is Abu Mohammed  
12 al-Adnani, a member of ISIS.

13 What guidance did he get from them? What was his  
14 understanding of what those leaders wanted him to do? Attack  
15 the kuffar in their backyard; kuffar, a reference to  
16 nonbelievers, meaning not Muslims. And he felt motivated by  
17 the messages of these terrorists to conduct an attack here in  
18 the United States.

19 Here a little bit of the evidence that was presented  
20 to you about ISIS. ISIS's primary goal is to establish  
21 caliphate, an the Islamic State throughout the entire world.  
22 There are also people who are motivated and directed by ISIS to  
23 conduct attacks and inspires their attacks in the United  
24 States.

25 Here's a little bit about Adnani, somebody who was

HAC9RAH3

Summation - Mr. Bove

1 encouraging, on behalf of ISIS, people to conduct lone wolf  
2 attacks like the one that the defendant conducted.

3 So now the defendant is describing how he reacted to  
4 this incident, the concern that he had that he could be  
5 arrested before he got to actually conduct an attack. What did  
6 he do? Everything had to be done quietly and I had to lie to  
7 cover up my tracks.

8 So we'll talk about some of the evidence of how he did  
9 that. But this is a letter that described exactly his thought  
10 process as he planned this attack.

11 Now I said the letter was a claim of responsibility  
12 and that's actually an important word in the propaganda of  
13 AQAP. This is another article from *Inspire* magazine that talks  
14 about this important question of claims of responsibility. In  
15 the middle here you can see it says: If it is a martyrdom  
16 operation then it is 90 percent claimed. What do they mean by  
17 that? That it would be obvious if the person conducting an  
18 attack died, who he was and why he did it. But then the next  
19 suggestion is: Placing a piece of paper near the location of  
20 the operation. And that, ladies and gentlemen, is just what  
21 the defendant did. That's what this letter is. It's a claim  
22 of responsibility.

23 Here's page six of the letter. The defendant is still  
24 talking about being blocked from traveling to fight overseas on  
25 behalf of a terrorist organization. He's expressing

HAC9RAH3

Summation - Mr. Bove

1 frustration that he wasn't allowed to meet death overseas.

2 And so this is what he decided to do. "Your people  
3 will hear pipe bombs, pressure cooker bombs going off in the  
4 streets they plan to run a mile." You saw those pipe bombs in  
5 Seaside Park. You saw the pressure cooker bombs at 23<sup>rd</sup>  
6 Street and 27<sup>th</sup> Street. That reference to the streets they  
7 plan to run a mile is a reference to this race in Seaside Park  
8 that Mr. Costello told you about.

9 And then at the bottom of the screen you can see a  
10 reference to you Osama bin Laden. "Brother Osama bin Laden  
11 offered you truce."

12 This is what you learned. This is the evidence about  
13 bin Laden. That he issued two fatwas in 1996 and 1998  
14 declaring war against the United States, calling for attacks  
15 against American civilians. This is the type of message that  
16 motivated the defendant to do what he did.

17 And this reference to a truce, it's directly out of  
18 *Inspire* magazine. This is the article where that truce is  
19 described that bin Laden offered.

20 And what does this show you? It shows you that the  
21 defendant didn't just download these magazines. He was an  
22 active consumer of this propaganda. He read it carefully. He  
23 thought about what it meant and he internalized it. He  
24 internalized it and he acted on it.

25 And this is the final letter, the final page of the

HAC9RAH3

Summation - Mr. Bove

1 letter. "The sounds of the bombs will be heard in the streets.  
2 Gunshots to your police. Death to your oppression."

3 So that's the written confession, ladies and  
4 gentlemen. That is a written-out plan of exactly what the  
5 defendant intended to do and that's exactly what he did.

6 So let's talk now about how his state of mind changed  
7 when he decided to carry out this attack. And the evidence  
8 shows that he made that decision long before he wrote the  
9 letter.

10 This is an e-mail from July of 2012. And you can see  
11 in the from line that the subscriber name on this account is  
12 Ahmad Rahimi. The e-mail is ahmadkakar@live.com. The subject  
13 of the e-mail is al-Awlaki. He's thinking about al-Awlaki back  
14 in 2012 as someone who is motivating him to do what he did.

15 And look at the attachment to this e-mail. It's that  
16 book of jihad that you saw. These are some of the things that  
17 were inside of it.

18 Chapter one on the command of jihad against the  
19 nonbelievers and its mandate, and warnings against those who  
20 don't practice jihad. Chapter two describing the virtues of  
21 jihad and mujahideen. And chapter 16 these necessary rulings.

22 This is right out of the book, ladies and gentlemen.  
23 It is allowed to ambush an enemy at night even if there are  
24 women and children among them since that is a necessity of  
25 jihad. That's exactly what this man did.

HAC9RAH3

Summation - Mr. Bove

1                   After 2012 there's additional evidence that the  
2 defendant continued to look up terrorist propaganda and consume  
3 things, read things that would later motivate him to conduct  
4 this attack.

5                   These are internet searches from the timefreeze e-mail  
6 account. If you start at the bottom, you can see he's looking  
7 at nasheeds, religious songs relating to jihad. And he  
8 continues to conduct searches relating to jihad.

9                   (Continued on next page)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Hac6rah4

## Summation – Mr. Bove

1 MR. BOVE: The top two are important. February 2015  
2 he is looking *Inspire* magazine. He is actually on the website  
3 of Aaron Zelin, the government's expert witness. He is  
4 downloading *Inspire* so that he can read it and use it in  
5 connection with this attack. The search above that,  
6 January 2015, the defendant of is looking up *Dabiq*, which is a  
7 similar propaganda publication but this one for ISIS.

15 So I have talked a little bit about Internet searches  
16 from this Timefreeze G-Mail account. These are the two  
17 subscriber documents. You can see that the defendant was using  
18 aliases when he set them up. On the left side, the Google  
19 document it says Timefreeze. On the right side, Quagmire. How  
20 do you know this is the defendant? From his wife's phone.  
21 There is a contact saved in that phone named Ahmad, the  
22 defendant's first name associated with that G-Mail account,  
23 Timefreeze77@gmail.com.

24 Look at the attempted communications between the  
25 wife's phone and this Ahmad contact on September 17th. She is

Hac6rah4

Summation - Mr. Bove

1 trying to figure out what is going on and reaching out to him.  
2 You know that this Ahmad is that Ahmad and the Timefreeze is  
3 the e-mail and the iCloud that he used from this phone. There  
4 are pictures of the defendant on his wife's phone as you would  
5 expect and that is how you know it was his G-mail account.

6 You also know that this is his e-mail account from the  
7 lap top. There are other documents on the lap top that require  
8 to Quagmire's iPhone. That is the alias associated with  
9 Timefreeze e-mail account. These show you, too, that these are  
10 linked -- the e-mail account, the iCloud account, and the lap  
11 top. The commonality there, the thing they are linked to, is  
12 the defendant. Three more documents from the lap top all  
13 referring to Quagmire's iPhone.

14 Is there any question that the lap top is the  
15 defendant's, ladies and gentlemen? This was seized outside his  
16 living room, Room G at 104 Elmora. In that same room is an  
17 Amazon box from one of the bomb components that he ordered, one  
18 of the purchases that he made. That lap top is absolutely  
19 littered with selfies of the defendant. It is his computer,  
20 ladies and gentlemen. It has selfies, it has identification  
21 documents, his social security card. This is the lap top he  
22 used and that helps you to understand why the Timefreeze  
23 account is was created.

24 So now let's go to the actual planning of the attack.  
25 As I said, this starts in May of 2016 with the surveillance

Hac6rah4

Summation - Mr. Bove

1 video from Home Depot. I am not going to show you the video  
2 now, but these are stills from it. You can see the defendant  
3 in the store. He paid cash. What did he buy? Bomb parts --  
4 galvanized pipe that he used at Seaside, caps for the pipe that  
5 he used at Seaside, and the cap elbow that was found in  
6 Elizabeth.

7 Remember, also that Agent Zimmermann told you about  
8 the basement at 104 Elmora and the Home Depot bag that was  
9 found down there, along with the saws and the other tools,  
10 drill bits. This is one of the workshops that the defendant  
11 used at 104 Elmora to build these bombs. Like I said, these  
12 are the purchases and this is where they ended up at crime  
13 scenes. Remember when Erin Brandt testified and I walked up to  
14 her and I said, What is this SKU number on this pipe, the pipe  
15 you see in top right and she read it and it matched the Home  
16 Depot receipt exactly? He bought this and made it into a bomb  
17 just like he bought the pipe elbow and made it into a bomb.

18 By June 5th you can see the defendant picking up  
19 additional aliases. Again, this isn't because he ever planned  
20 to get away with this crime. It was because he wanted to make  
21 sure he didn't get arrested before he could conduct the attack.  
22 So the top picture you see on the screen here is the e-mail we  
23 looked at when the defendant was using his real name associated  
24 with the Ahmadkakar e-mail account.

25 On June 5th, 2015, he sends a recovery e-mail. He

Hac6rah4

Summation - Mr. Bove

wants to get access to that account again. When he does that, he changes the subscriber name. He is not Ahmad Rahimi anymore. He is Aloha Hawaii. You can see that in the bottom e-mail, which he sends to himself at G-Mail account with the subject "New." So he is getting set up. Why? Because he wanted access to the *Book of Jihad* again. He wanted to start to review its teaching, teaching about Jihad, martyrdom, and the ambush principle that I described earlier. You know that this document was not just in his e-mail account. It was on the lap top as well. That is what you see on the right side the screen here. This document was taken from the e-mail account and backed up onto his iPhone and then on to the lap top. The defendant was actively reviewing the *Book of Jihad* in June and July of 2016.

Here is alias number four, Ronald Welsh. The document on the top of the screen is the subscriber information for the e-mail account that the defendant set up in the name Ronald Welsh. How do you know he did that? Look at the terms of service IP. That IP address matches what you see in the bottom right of the screen because the defendant used a wi-fi at his house at 104 Elmora Avenue to access the Internet to set up the Ronald Welsh. How else do you know he is the one who set it up? The credit card you see on the left is from the lap top. There is a picture of the credit card that he set up in Ronald Welsh's name on the lap top.

Hac6rah4

Summation - Mr. Bove

1                   So he sets up the e-mail account on June 16th of 2016.  
2 What else does he do? He sets up an Amazon account. You see  
3 in the bottom right there the created date of the Ronald Welsh  
4 Amazon account? It is the same day. Why does he have a  
5 picture of that credit card on his lap top? Because he used it  
6 as the purchase information for the Amazon account. The number  
7 matches. The name matches.

8                   June 20th was a busy day for buying bomb components  
9 for the defendant. These are some of the things he used using  
10 the Ronald Welsh Amazon account on June 20th. We'll talk about  
11 them in a minute, but you can see he had them shipped to 587  
12 Fayette Street. You see that in the middle of the screen.  
13 That is the Amazon document. Then on the right left corners  
14 you can see from the lap top the purchase confirmations. He  
15 kind of shed the alias there and they are shipped to Kennedy  
16 Ahmad at Kennedy Fried Chicken or Kennedy Fried Chicken Ahmad.  
17 These are in the left and right corners.

18                   What is Kennedy Fried Chicken? That is where the  
19 defendant worked, ladies and gentlemen. You heard that from  
20 Younus Rahimi. The defendant is buying bomb parts under the  
21 alias Ronald Welsh and shipping them to his place of work by  
22 June 20th, 2016 so he can start to put these together. He also  
23 uses his own name that day to buy some additional things. This  
24 is an eBay account where in the name of Ahmad Rahimi the  
25 shipping address is also 587 Fayette. He is shipping bomb

Hac6rah4

Summation - Mr. Bove

1 components to his place of work on June 20th.

2 Now let's talk about what he bought. These are the  
3 Amazon purchases. We'll go through them one by one and you'll  
4 see that they link up almost exactly with the HMTD instructions  
5 that were on the lap top. He was buying the tool he needed to  
6 make this incredibly dangerous explosive in his house. Let's  
7 start with the top one in the red box, citric acid powder. You  
8 see in the bottom right citric acid is one of the components  
9 and Robert Mothershead confirmed that to you yesterday.

10 Next, hydrogen peroxide. Mr. Mothershead told you  
11 that peroxide for these purposes it is better when it is more  
12 concentrated. That is what he bought, 35 percent food grade  
13 hydrogen peroxide. You see in the picture, 30 percent hydrogen  
14 peroxide, H<sub>2</sub>O<sub>2</sub>. He is buying what he needs to make HMTD.  
15 Digital multiple function kitchen and food scale. Bottom  
16 center of the screen. You need a scale to figure out what the  
17 yield is of the explosives that you can making at home. Next,  
18 glass beaker. Check, bought that, too. He setting up a  
19 chemical lab in his bedroom.

20 What else did he buy, ladies and gentlemen. On  
21 June 20th the defendant bought bomb shrapnel -- steel ball  
22 bearings. He bought them from eBay. He bought them from  
23 Amazon. Do you remember when I passed this around how heavy it  
24 is. He bought this to kill people. This shrapnel was picked  
25 up all over the street on 23rd Street. You can see that on the

Hac6rah4

Summation - Mr. Bove

1 left. On the right you can see the way it looked when it was  
2 recoverd intact inside the 27thth street bomb. Glued in a  
3 sheet so that the explosives would fire it all over the seat of  
4 the blast.

5 A few days later, ladies and gentlemen, the defendant  
6 gets the iPhone working. This is the iPhone that he later sold  
7 to Younus Rahimi. He has an e-mail account where he is trying  
8 to unlock the IMEI, the unique number assigned to each device.  
9 This is a picture of the phone he later sold to Younus Rahimi  
10 with the same IMEI.

11 July 2nd, the iPhone backup. Mr. Donaldson told you  
12 about this pretty early in the trial and you can bet that the  
13 defendant regrets having made this mistake. Look at the folder  
14 associated with this backup field. This is not a folder that  
15 is saved on a desktop of a computer. This is not your My  
16 Documents folder. He didn't realize plugging in the phone  
17 backed it up in this way. The defendant didn't realize that he  
18 left these traces of his crime on that lap top. He didn't know  
19 that he left his issues of *Inspire* magazine. He didn't know he  
20 left the screen shots of jihad. He didn't realize that HMTD  
21 cookbook was left on this lap top. But FBI recovered it and  
22 presented it to you at this trial.

23 Throughout July and August, the defendant continued to  
24 buy bomb parts -- more shrapnel, the electronic matches that  
25 were found in the bomb at 27th Street, thread sealant tape for

Hac6rah4

Summation - Mr. Bove

1 the pipe bombs at Seaside, the elbow pipe in Elizabeth, and  
2 some more citric acid for some more HMTD.

3 This is what I mentioned earlier when the defendant  
4 sold that iPhone that he was using for some of these activities  
5 to Younus Rahimi. He made that sale because he wanted to get  
6 rid of the evidence. Remember, Younus Rahimi told you the  
7 phone was on factory reset without a SIM card when he got it.  
8 He also needed some more money to continue to finance the  
9 attack. So you can see that purchase happened from the bottom  
10 document between August 18th and August 19th. So this is the  
11 phone with the long identifier that Mr. Donaldson described to  
12 you 9C53. That is the phone the defendant had and you can see  
13 when the defendant had it, it was associated again with that  
14 Timefreeze e-mail account. There is a log-in on 18th and then  
15 on the 19th Younus Rahimi has it with his e-mail account. So  
16 that is when this sale happened.

17 What is next, ladies and gentlemen? Bomb plans.  
18 These are the communications that you saw yesterday between the  
19 defendant and Zobayeh Rahimi. She makes a reference to bomb  
20 plans. You will remember from Mr. Shroff's cross-examination  
21 of Mr. Calabrese when she made him read out what that acronym  
22 means, LMFAO and several others. Do you think that the victims  
23 in this crime thought that was funny? Do you think the  
24 defendant's bomb plans were funny? Was that a point worth  
25 making yesterday?

Hac6rah4

Summation - Mr. Bove

1                   Two days before the attack, September 15th of 2016,  
2 the defendant is in his backyard testing out the explosives  
3 that he made. You saw this video from two angles, the  
4 surveillance camera from 104 Elmora and the cell phone of  
5 Zobyedh Rahimi. You can see her in the picture with the phone  
6 in her hand making the video that is on the right. That  
7 canister that is in the photo on the left, you know what that  
8 is. You saw it from the exemplar. That is from the rock  
9 tumbler, the rock tumbler that the defendant used in his  
10 bedroom to make black powder for these bombs.

11                   (Video played)

12                   Look how happy that man is. Look at the smile on his  
13 face. Two days before this attack, he knows his explosives  
14 work. The jihad that he has been thinking about since 2012,  
15 that he has been reading about in *Inspire* and *Dabiq*, the jihad  
16 he has been planning for months is two days away and he  
17 couldn't be happier.

18                   So now let's talk about the attack itself. As I said,  
19 we're going to start at 5:00 a.m. at the defendant's house, 104  
20 Elmora Avenue. This is another time where the defendant gets  
21 caught by his own surveillance camera committing part of this  
22 crime. You can see in the picture on right where that  
23 surveillance camera is outside the First American Fried Chicken  
24 restaurant. That is on the front of his house. And on a flag  
25 near the red box to the left where 104 Elmora is on the street.

Hac6rah4

Summation - Mr. Bove

1                   That is from that surveillance camera. On left  
2 September 17th, 4:58 a.m., the defendant is walking out of his  
3 house with a white trash bag. He comes back a few minutes  
4 later at 5:05 a.m. That is what is in the trash bag, ladies  
5 and gentlemen, the bomb that he detonated in Seaside. How do  
6 you know that? Because there was a white trash bag much like  
7 it in the trash can that you see on the screen at the seat of  
8 the blast. This was the defendant's first bomb load on that  
9 morning. He was carrying those bombs out to his BMW.

10                  This is the second trip. It was too heavy to carry  
11 because the man had made so many explosives. Two bags, the  
12 23rd street bomb, the 27th Street bomb, and that backpack, the  
13 backpack that he carried around this entire day, these two  
14 bombs that he carried around the rest of the day until he  
15 planted them, there they are. The backpack has the bomb that  
16 was made out of PVC that you can see the fragmentation glued or  
17 taped to the top of it. Those are nuts and bolts on top of it  
18 to maximize the damage. That is the one that you heard about  
19 this morning that had HMTD in it that is so dangerous and so  
20 volatile that even the bomb techs couldn't diffuse it. It  
21 exploded in Elizabeth when they found it. Then you know what  
22 these duffel bags are, the 23rd Street and 27th Street bombs.

23                  I mentioned that the defendant took the BMW to go down  
24 to Seaside. This is how you know that, ladies and gentlemen.  
25 There were documents with his name on them in that car. Erin

Hac6rah4

Summation - Mr. Bove

1 Brandt told you about the search conducted on September 19th.  
2 Here are some of the documents that were found. You also know  
3 that the defendant used this BMW from Younus Rahimi, who told  
4 you he saw the defendant come to and leave from work in a blue  
5 BMW.

6 So this is the trip that he took that morning. He  
7 goes down to Seaside Park in that car. You know that from the  
8 Garden State Parkway records. You also know that from the  
9 defendant's own iCloud. These are the driving instructions  
10 that he saved in the iCloud. It started at Canton Street, the  
11 street on the same block as his house. These are precise  
12 directions to get to Seaside Park for this bombing stored in  
13 the defendant's iCloud.

14 Continues on the Garden State Parkway. Here you also  
15 have the license plate capture from the Raritan toll plaza.  
16 The defendant is on the road to conduct this bombing by  
17 5:29 a.m. He exists the Garden State Parkway at Toms River,  
18 6:06. Not much traffic. It is a quick trip. You can see  
19 we're just going right down the driving instructions from the  
20 iCloud. The destination on those instructions was the Sawmill.  
21 It is a restaurant in Seaside.

22 What happens next? The defendant walks a few blocks  
23 down to C Street and plants that bomb in the trash can. That  
24 red box on Ocean Avenue and D Street is the seat of this blast.  
25 You heard about that from Erin Brandt and some of the other

Hac6rah4

Summation - Mr. Bove

1                   witnesses who passed through here quickly as well.

2                   What was found there? Three pipes packed with  
3 explosives set off by a single detonator, one fusing system,  
4 this cell phone. Special Agent DeFusco described that to you  
5 during his testimony. The analysis was that it was wired up,  
6 connected to this phone with Christmas tree lights into each  
7 pipe so that an alarm or some other thing that could trigger  
8 the vibrate function would send power to the Christmas tree  
9 lightbulb and the Christmas tree lightbulb would detonate the  
10 bombs. You know because Special Agent DeFusco examined them  
11 and explained it to you that at least one of these actually  
12 went off. You also know that from looking at this photo you  
13 can see the trash can is blown out from the bomb. There is not  
14 really any question that this is a phone that the defendant  
15 used. It has his fingerprints all over it and his DNA.

16                  Let's think about what has happened up to this point  
17 on September 17th. Defendant got up early. He packed his  
18 bombs in the BMW. He drove down to Seaside Park. He left that  
19 bomb there knowing it would detonate because he had set the  
20 alarm on the cell phone. The bomb does in fact detonate and  
21 now he drives back to New Jersey. He still has the 23rd Street  
22 bomb with him, the 27th Street bomb, and six more bombs in that  
23 backpack. He is back home at 104 Elmora by 10:45 in the  
24 morning. Ladies and gentlemen, this speaks volumes about his  
25 intent for that day. The man knows by this time that his bomb

Hac6rah4

Summation - Mr. Bove

1 making scheme worked. He knows that the things he built are  
2 capable of doing what he designed them to do.

3 So what does he do for the rest of the day? He gets  
4 ready to conduct the attack here in the city. You saw by about  
5 5:00 p.m., he was ready to leave. I am going to play this  
6 video in a minute and ask you to focus on the doorway when the  
7 defendant comes in and he tosses his keys. Watch how confident  
8 he is. Watch how prepared he is to get on the train, come to  
9 the city and detonate bombs here.

10 (Video played)

11 That is a man on a terrorist mission. What happens  
12 next? Defendant takes the train from New Jersey into Penn  
13 Station into Manhattan. That is significant I expect you will  
14 hear when you listen to the Judge's instructions because of the  
15 interstate travel. The defendant crosses the state borders  
16 between New Jersey and New York.

17 Some of that train schedules are in evidence, ladies  
18 and gentlemen. You can see that there was one that day  
19 departing Elizabeth at 6:03 and arriving at Penn Station at  
20 about 6:36. You know from the surveillance video that that is  
21 when the defendant got there. Look at the crowds. When you  
22 think about and evaluate the evidence relating to the third  
23 category of charges, those transportation charges, the use and  
24 carrying of bomb charges, I am talking about Count Six, Certain  
25 and Eight, remember these pictures and remember how dangerous

Hac6rah4

Summation - Mr. Bove

1 those explosives were and think about all the risks that were  
2 created by this decision to carry bombs through Penn Station at  
3 this time of night on a Saturday.

4 (Video played)

5 Here are some of the video where you can see even more  
6 clearly that the defendant at this point he has the 23rd Street  
7 bomb in a duffel bag, the 27th street bomb, and six more in the  
8 backpack.

9 (Video played)

10 Let's continue. There are the bombs. Where do you  
11 see him next? Coming out of Penn Station. When I started this  
12 afternoon, I talked about some of the pauses that the defendant  
13 took to stay on schedule because of the way that the cell  
14 phones were set up to detonate based on the alarms. This is  
15 one of the pauses. Here it is on video.

16 (Video played)

17 Remember when I said he looked at New Yorkers walk by?  
18 This is the defendant thinking about his victims, thinking  
19 about his intentions, thinking about his plan for the rest of  
20 that night. He picks up the bombs and continues.

21 One of the next places you saw him on surveillance  
22 video was heading south on Eighth Avenue near 25th Street.  
23 This is where he took pause number two. This one was longer.  
24 It is about 20 minutes. We'll not watch the whole video. He  
25 has a schedule. He knows he cannot just leave these things out

Hac6rah4

Summation - Mr. Bove

1 on the street because someone will find them. There is a  
2 distinct window where you can plant it, it will be concealed  
3 but it will not be found, giving him enough time to get away  
4 but leaving the bomb in place so that it can go off. He is  
5 trying to meet that window.

6 (Video played)

7 So he put those bombs down. If you look at the  
8 timestamp in the bottom right we are at about 6:51 p.m. The  
9 video continues onto 7:10. You can see the defendant here  
10 standing up on the curb just to the right of that bench where  
11 he set the bombs down in the video we just watched. Now he is  
12 ready to go. He is ready to continue with his plan to head  
13 down to 23rd Street. This is not the defendant hesitating. It  
14 is not him wavering at all. This is him staying on schedule  
15 and sticking to the plan. And there he goes.

16 He heads down Eighth Avenue, ladies and gentlemen, and  
17 then over onto 23rd Street. This is the area of the seat of  
18 the blast on 23rd Street. You heard a lot about Selis Manor at  
19 135. That was Mr. LiCastro who told you about that as well as  
20 some of the residence. You heard about 131 West 23rd Street,  
21 the Townhouse Inn of Chelsea and the King David Gallery. You  
22 know the dumpster landed on other side of the street near 144.

23 Mr. LiCastro presented you with this chart to help  
24 make clear where the different surveillance cameras were  
25 located in the scaffolding outside of Selis Manor. You saw

Hac6rah4

Summation - Mr. Bove

1 that the defendant was picked up on each and every one of these  
2 cameras. He is walking towards the area where he planted the  
3 bomb clearly both bombs in the bags and the backpack. This  
4 slide is to help you get oriented between the links between  
5 video from 135, the Selis Manor video and Townhouse Inn. The  
6 best way to do it is stay focus on the murals and the awning in  
7 the bottom right is the awning of the Townhouse Inn of Chelsea.

8 (Video played)

9 You will see the timestamp is 19:29. So it is 7:30 on  
10 September 17th. The defendant walks past where he planted the  
11 bombs. He has both bags with him. Remember, Mr. Ord told you  
12 where he went and you can see it here. He goes to sit on the  
13 steps of the church nearby. He knows at this point the cell  
14 phone detonator is set for 8:30 and an hour is too long to  
15 leave that thing out in the street. Someone will detect it and  
16 he is worried someone will find it and prevent it from going  
17 off.

18 So look at timestamp here. 7:30 and he sits there.  
19 He watches people walk by on 23rd Street for about 20 minutes  
20 with both of those bombs next to him. That is where he is  
21 sitting, ladies and gentlemen, right next door on the steps of  
22 that church. You can see from the video here where he picks up  
23 and it is 20 minute later, 19:53, 7:53. If you watch that  
24 left-hand corner, you will see the defendant stand up and wheel  
25 the bombs back. He is going to walk past the camera and then

Hac6rah4

Summation - Mr. Bove

1 you will see him head off the sidewalk. He is going out into  
2 the street to plant the bomb near those dumpsters that  
3 Mr. LiCastro told you about because that was the place given  
4 the scaffolding there and all the activity on the street where  
5 he thought correctly that no one would find the bomb before it  
6 went off.

7 (Video played)

8 Here he heads off the sidewalk. You know what he did  
9 after that. You know that he planted that bomb near the  
10 dumpster because the next thing that comes up is the video with  
11 him holding just one bag. He has planted the first bomb at  
12 this point and he is walking away calmly from the bombsight  
13 down 23rd Street. He is has given himself enough time having  
14 left at 8:00 and the alarm is set for 8:30 to get himself away  
15 from it and is he also put in a position to cause as much death  
16 and devastation as possible.

17 Here is the camera shots of him walking back past  
18 Selis Manor. Clearly just one bag at this point. You know  
19 what happened on 23rd Street at 8:30.

20 (Video played)

21 That video just went black because the bomb blew the  
22 camera up. This is the video from the Townhouse Inn that I  
23 talked about earlier. There are no words for this.

24 (Video played)

25 The cameras at Selis Manor picked up people on video

Hac6rah4

Summation - Mr. Bove

1 in complete panic and shock from the bomb that went off just  
2 yards away. That is Cort Cheek. Remember how he described  
3 this? Look at the people sprint by. These women cannot even  
4 tell which direction they have been attacked from.

5 So those were all videos from the north side of the  
6 street right near where the defendant planted the bomb. You  
7 saw there was extensive damage on the south side of the street  
8 as well. These are some of the videos from Orange Theory  
9 Fitness that Adam Krell talked about.

10 (Video played)

11 You see Tsitsi Merritt's car on the left? You heard  
12 about this this morning. You window was blown out of the car  
13 with a child in the back.

14 One of the things you will be asked to consider when  
15 you deliberate is whether or not this bomb damaged property.  
16 Do you think these pictures speak for themselves? Glass blown  
17 onto the streets. You remember what Mr. Ord told you about the  
18 bomb ripping into the basement of 131 West 23rd taking some of  
19 the equipment down there and ripping it right off its concrete  
20 moorings. These are some of the vehicles that Special Agent  
21 McReynolds told you about with the windows blown out, shrapnel  
22 damage. Look at the photo in the top right in the church with  
23 the window blown out.

24 So while all that was happening on 23rd Street, as  
25 that bomb was ripping through the street, the defendant was

Hac6rah4

Summation - Mr. Bove

1 walking calmly to 27th and planting that bomb. This is the  
2 route he took up Seventh Avenue and over onto 27th Street.

3 (Video played)

4 Here is one of the surveillance cameras showing that.  
5 You can see he has the one bomb at this point in the wheelie  
6 bag and the backpack with the bombs that were found in  
7 Elizabeth.

8 There were cameras on 27 Street that picked up the  
9 defendant planting this bomb much in the same way that he is  
10 picked up planting the 23rd Street bomb. So here is a series  
11 of stills from those cameras showing him walking down.

12 (Video played)

13 This is video from the scaffolding and you can see in  
14 the top left corner there is the mailbox where the defendant  
15 eventually planted the bomb. You can watch as his feet pause  
16 there as he thinks about is this the best place. You will see  
17 in the next video he pivots his hips because he is looking  
18 across the street at the hotel and the restaurant and that is  
19 how he decided, I submit to you, that this was the right place  
20 to do this.

21 (Video played)

22 The Mailbox is right under the word "street" at the  
23 top. That is the defendant with the bag. There he is looking  
24 across the street, looking at the people at that restaurant and  
25 he calmly walks away. He walked away intending that that bomb

Hac6rah4

Summation - Mr. Bove

1 would go off in a half hour leaving himself about the same  
2 window he left himself at 23rd Street. He plans and intended  
3 for this bomb to detonate in exactly the same way the 23rd  
4 street one did.

5 Remember the forensic evidence found on this bomb.  
6 Fingerprints not just on the pressure cooker but actually  
7 inside the cell phone. DNA on the cell phone. Mr. McFarlane  
8 told you there was an alarm set on the phone, set to vibrate.  
9 You know what that would have done with this phone the way it  
10 was modified. It would have sent power on to the wires that  
11 the defendant soldered on it and power to the Christmas tree  
12 lightbulb that the defendant had fixed into the box and it  
13 would have detonated the black powder and the HMTD that the  
14 defendant made and planted in that bomb.

15 (Video played)

16 Here is another shot of the defendant now leaving the  
17 seen without the bomb. The same cameras pick him up walking  
18 away giving himself a safe distance from the bomb he just  
19 planted.

20 (Video played)

21 This is the video that you saw of the two men who walk  
22 by and notice this. They open up the bag. They take the bomb  
23 out. I think you will recall vividly from this morning what  
24 Special Agent DeFusco thought about the wisdom of touching this  
25 device. He said it would be like slapping a cobra. This is

Hac6rah4

Summation - Mr. Bove

1 one the three times where it worked out okay. This is one of  
2 the absolute miracles in evidence at this trial that this bomb  
3 packed with HMTD did not go off as these men jostled it.

4 Because what they did is they handled the bomb in ways that the  
5 defendant hadn't up until this point. They moved it around and  
6 shook it by the pressure cooker body. I submit to you in doing  
7 that, they dislodged one of the wires, one of the parts of the  
8 fusing system.

9 See the way he is handling it now? They like the bag  
10 and they took the bag and walked away with it. They left the  
11 bomb out in the open on the street. What did that do? It  
12 allowed Ms. Schreibman to see it and it allowed her to identify  
13 it and call 911 so that the NYPD could come and diffuse it.

14 Think about the timing. The alarm was set in that  
15 phone to detonate for 9:00 p.m. These men did this at about 10  
16 to. This is what prevented this bomb from going off. Nothing  
17 that the defendant did. The defendant had every intention of  
18 this one going off like the one in Seaside and the one in 23rd  
19 Street.

20 Think about what he was doing around this time. Now  
21 it is 9:06. He is up on Seventh Avenue, 32nd and 33rd Street.  
22 It is about six minutes after the alarm was supposed to go off.  
23 He is probably wondering what is going on. Why hasn't this  
24 think gone off yet.

25 Remember some of the cross-examination that happened

Hac6rah4

Summation - Mr. Bove

1 of the law enforcement officers who collected evidence at 27th  
2 Street, Special Agent Leung and Special Agent Jill Enyert?  
3 They were asked questions about, was it really still dangerous  
4 after this bomb had been diffused? After the bomb had been  
5 removed from 27th Street, was there any danger? Was there any  
6 rush? Are you sure you didn't have time to take some more  
7 notes about exactly how this happened? This picture captures  
8 exactly why they were right, why their procedures were entirely  
9 appropriate.

10 The defendant for the rest of September 17th, the rest  
11 of the night, walked around with a backpack full of six more  
12 bonds. As the 27th Street crime scene was being processed, he  
13 was still out there with more explosives. You heard a lot  
14 about what happened at 27th Street. Detective Hallik responded  
15 to that scene. He used a robot to remove the cell phone  
16 detonator from the device. That cell phone you heard from  
17 Special Agent Leung and Enyert was collected, was taken back to  
18 the crime scene setup at 23rd Street so that it could be  
19 processed. The phone was on when it was picked up. It was set  
20 to go off. It was then recorded in evidence at the crime scene  
21 and rushed down to Quantico so that it could be evaluated.

22 The bomb itself, the pressure cooker, was put in a  
23 total containment vessel, brought safely to Rodman's Neck so  
24 that the bomb techs could diffuse it. They call it a  
25 render-safe procedure. They popped the lid off the pressure

Hac6rah4

Summation - Mr. Bove

1 cooker. The real victory of that operation, what it really  
2 allowed was the evidence to be preserved. They didn't just  
3 take it out into the desert and detonate the bomb. They took  
4 it apart carefully so that that evidence could be preserved and  
5 so that you can see the proof of exactly what the defendant  
6 build and know from that proof, know from the contents of that  
7 pressure cooker what his intentions were.

8 Now, let's talk about what happens next. The 23rd  
9 Street bomb is detonated. That crime scene is being processed.  
10 The 27th Street bomb has been collected and it is in the  
11 process of being diffused. The defendant is still at large.  
12 Next time that he shows up on surveillance video is at Penn  
13 Station the following day. It is about 2:50 on September 18th.  
14 He still wearing the backpack. Again, the backpack that you  
15 know has six additional bombs. This is the second time that  
16 the defendant brought a load of bombs into Penn Station during  
17 this case.

18 (Video played)

19 He catches a train. Here he is at the Newark Penn  
20 Station. There is a transfer he picks up, 3:25. Going to  
21 Elizabeth at 3:35. You can see on the video still with the  
22 backpack. The Elizabeth Train Station to be clear is within  
23 blocks of 104 Elmora Avenue. This is naturally the stop the  
24 defendant would take and this is where the defendant planted  
25 the rest of those bombs.

Hac6rah4

Summation - Mr. Bove

1 Now, Ladies and gentlemen, the fusing systems on these  
2 bombs were different. They weren't cell phone. They were the  
3 green hobby fuse. The testimony was you would have to light it  
4 in order to make them detonate. Remember, that they also  
5 contained HMTD. So this is relevant for two reasons. The  
6 first is that HMTD is to volatile, as Special Agent DeFusco  
7 told you already, that it could have gone off at any point by  
8 shaking it around. So leaving these types of bombs with that  
9 type of explosive at a train station -- remember, it was found  
10 on the 18th on a Sunday into early on the 19th. The bombs  
11 would have been right there on a crowded rush hour on that  
12 Monday. So it speaks about the defendant's intent that he left  
13 an explosive mixture this volatile right near a train station.

14 It also speaks about the 27th Street device. There  
15 was HMTD in both of those and you know what happened at the  
16 Elizabeth Train Station. The bomb technicians at that crime  
17 scene were not able to render safe these devices. The one that  
18 is in the red box, the one made out of PVC pipe, when they  
19 tried to collect it and tried to take the top off so they could  
20 empty out the explosives, it blew up. These were devices that  
21 were capable of exploding, both the 27th Street device and  
22 these as well. That is how you know that the defendant  
23 intended for the 27th Street device to explode and do great  
24 damage because it had HMTD in it. That substance by itself  
25 just by jostling it can go off at any time.

Hac6rah4

Summation - Mr. Bove

1           If you needed anymore proof that these were the  
2 defendant's bombs at the Elizabeth Train Station, Dee J. Fife  
3 provided that extensive fingerprints were found all over the  
4 bomb, the tape from inside the bombs, and DNA was found on one  
5 of the lighters in the backpack.

6           So now there are a few active crime scenes, the  
7 bombing in Seaside Park, the bombing on 23rd Street, an  
8 attempted bombing where a bomb was found at 27th Street, and  
9 there are these additional bombs at Elizabeth Train Station.  
10 Then you know that on the morning of September 19th, 2016, the  
11 defendant was arrested and his house was searched shortly  
12 thereafter. This is a stipulation in evidence that the  
13 defendant was arrested that morning on the 19th. You know that  
14 that is when the notebook was collected that contained the  
15 letter that we talked about in the beginning.

16           How do you know that the defendant wrote that letter?  
17 First of all, he was carrying it around with him after he  
18 conducted this attack and it describes the attack that he  
19 conducted. Second, think about the way that it is written. It  
20 is written in the first person. He repeatedly refers to  
21 himself as "I" as he describes his plan.

22           Let's talk about the searches because there was  
23 important evidence found after the defendant was arrested at  
24 his house at 104 Elmora. We've already talked a little bit  
25 about this living room area, which the FBI called Room G during

Hac6rah4

Summation - Mr. Bove

1 the search. One of the things they found there was the hard  
2 drive that contained the surveillance video that showed the  
3 defendant testing the bombs on the 15th, showed the defendant  
4 leaving to go to Seaside Park on the morning of the 17th, and  
5 showed him coming back and departing again later that day.  
6 They also found this Amazon box in Room G in that living room  
7 but also outside the defendant's bedroom.

8 Let's talk about that bedroom.

9 THE COURT: Mr. Bove, this might be a good time to  
10 take five minutes.

11 (Jury excused)

12 (In open court; jury not present)

13 THE COURT: Please be seated.

14 MS. SHROFF: Your Honor, can we step out?

15 THE COURT: Sure.

16 (Recess)

17

18

19

20

21

22

23

24

25

HAC9RAH5

Summation - Mr. Bove

1 (Jury present)

2 THE COURT: Mr. Bove, go ahead.

3 MR. BOVE: May I continue, Judge?

4 THE COURT: Sure.

5 MR. BOVE: Thank you.

6 Now before the break we had started to talk about the  
7 search of the defendant's house. The first one took place on  
8 the same day he was arrested, September 19. So less than 48  
9 hours after this bombing occurred the defendant was in custody  
10 and the FBI was at his house looking for additional evidence.

11 So we talked about room G and the surveillance video,  
12 the hard drive that was found there. And the Amazon box, the  
13 type of box that would have been sent for the defendant's  
14 Ronald Welsh purchases, the shrapnel. We started as to talk  
15 about the bedroom, the bedroom that was connected to that  
16 living room.

17 If you look at the top right photo. There is a cooler  
18 in that closet, ladies and gentlemen, packed with additional  
19 identification documents from the defendant. This was  
20 defendant's bedroom and it was also his explosives laboratory.

21 Let's start with the HMTD evidence. You heard that  
22 there was a swab taken of the plywood that you see in the photo  
23 on the left. And Mr. Mothershead told you that there was  
24 residue from HMTD on that plywood.

25 You also heard -- now I'm talking about the photo in

HAC9RAH5

Summation - Mr. Bove

1 the middle -- that there was a vacuum sample taken of the  
2 carpet near that electrical out let. Again, Mr. Mothershead  
3 told you HMTD residue on the carpet. The defendant used this  
4 bedroom as one of the places, one, that he made these bombs.

5 What else was in that room? The rock tumbler. You've  
6 seen the rock tumbler that was seized from that closet. You've  
7 seen an exemplar of a rock tumbler. There was a lot of  
8 testimony about this rock tumbler.

9 What does it mean, ladies and gentlemen? This is what  
10 the defendant used to make the black powder. You heard from  
11 Mr. Mothershead that the black powder that was found in the  
12 27<sup>th</sup> Street device was more fine than commercial grade black  
13 powder. Commercial grade black powder is coarse and it has a  
14 coating. This did not. It's because the defendant used this  
15 tool to mix the components together. There was black powder  
16 found on the red body of the pressure cooker, and there was  
17 also the defendant's fingerprint found there as well.

18 There were other bomb-making tools, bomb-making  
19 equipment found in this room: The caulk gun that the defendant  
20 used to seal the top on the pressure cooker of the 27<sup>th</sup>  
21 Street bomb. Remember Detective Hallik told you about how much  
22 trouble they had at Rodman's Neck, at the bomb range, trying to  
23 figure out how to pop that lid off to get the contents of the  
24 bomb out safely. And one of the reasons that it was so  
25 difficult, one of the reasons this bomb was so dangerous was

HAC9RAH5

Summation - Mr. Bove

1 that the defendant sealed the pressure cookers so that nobody  
2 could get back into it once he had placed the explosives inside  
3 of it.

4 You can also see the duct tape, the duct tape that you  
5 saw on just about every bomb the defendant made.

6 I said the bedroom was just one of the places where  
7 the defendant made bombs inside his house. There was also a  
8 workshop in the basement. This is the room the FBI labeled L  
9 during the search. And one of the first things that Agent  
10 Zimmerman told you about room L was that there was a big piece  
11 of PVC pipe in the trashcan. You can see that in this photo.

12 Where else did you see PVC pipe in the evidence in  
13 this case? There were fragments of it, and fragments only,  
14 from the bomb that went off that was found in Elizabeth. This  
15 is the PVC pipe that was used to make that bomb that detonated  
16 when the bomb techs tried to make it safe.

17 What else was in room L? A whole lot of tools. Saws.  
18 Black electrical tape like the tape you saw on some of the  
19 bombs. Drill bits. Those drill bits were necessary to drill  
20 into the pipes. Why? So that the Christmas tree lights and  
21 the wires could be slotted in so that those bombs would  
22 detonate. That's the way the Seaside bomb worked. And you  
23 could see that the holes in the pipe, the elbow pipe that was  
24 found at Elizabeth so that the fuse, the green fuse could be  
25 inserted.

HAC9RAH5

Summation - Mr. Bove

1                   And then remember I asked the question about the white  
2 bucket that you see just on the bottom of the screen in that  
3 picture? Remember what was inside there? Screws. Nails.  
4 Fragmentation. This was a place where the defendant stored  
5 shrapnel for the bombs that he made.

6                   Also in this basement area was a notebook, a binder  
7 that you saw in evidence, Government Exhibit 533. This was a  
8 notebook with the defendant's notes from a class that he took  
9 about electronics. This is how you know that the defendant had  
10 the skill, the expertise to make the fusing systems that he  
11 made. These were not simple things that he did. He soldered  
12 wires. He removed the vibrate feature out of the phone. He  
13 had the experience to do that, and you know it from this binder  
14 found in the same room where the tools were that he used to  
15 make the bombs.

16                   And you know that this was a room he was using from  
17 this suitcase. This is another place where the defendant left  
18 evidence of his identification documents, other materials  
19 relating to him that prove that these are places that he was  
20 using, that he had access to, and that he used in connection  
21 with this crime.

22                   This is all from that basement, ladies and gentlemen,  
23 the PVC pipe, the tools, the frag bucket, the binder with the  
24 electronics instructions, and these documents with the  
25 defendant's name on it.

HAC9RAH5

Summation - Mr. Bove

1                   You also heard a lot of testimony about the backyard.  
2 We've seen a little bit of the backyard already from  
3 September 15 of 2016 when the defendant tested the black powder  
4 that he was making in his bedroom out there.

5                   These are the canisters on the right side from the  
6 rock tumbler. Remember the testimony about the rock tumbler  
7 that was seized out of the closet and it was missing those two  
8 pieces? That's because they were burned and damaged from  
9 explosives in the backyard. This is the way they were found  
10 back there, along with burnt electronics, like cellphones that  
11 the defendant was trying to get ride of because he was  
12 concerned that he was going to be caught before he could  
13 conduct this attack.

14                  Look at the bottom of the screen. Look at the siding  
15 on the house. The defendant's been testing explosives back  
16 there to such an extent that the siding was getting melted on  
17 the house at this point.

18                  Now, I want to talk in more detail about how these  
19 bombs were made, the different pieces that put them together.  
20 The reason that I want to talk about this is it shows that they  
21 were sophisticated and that the defendant understood that they  
22 would kill people if they detonated. The defendant put them  
23 together to do just that, intending to commit all of the crimes  
24 that he's charged with.

25                  Judge Berman is going to instruct you about the

HAC9RAH5

Summation - Mr. Bove

1 different definitions that you need to be considering, things  
2 like explosives, weapons of mass destruction, destructive  
3 devices. Those are definitions that we'll talk about in a bit.

4 The different components of these bombs, although  
5 they're somewhat technical, are not necessarily legal  
6 requirements that you've got to consider. They just help to  
7 show you that the defendant was himself a sophisticated  
8 bombmaker.

9 So you heard about the different components that go  
10 into an improvised explosive device, which is just a fancy term  
11 for a homemade bomb. You heard this from Special Agent  
12 DeFusco. These are the things that we saw in this case. An  
13 outer container, an inner container, a fusing system, some kind  
14 of explosive, and fragmentation.

15 So let's talk about what each of those pieces are and  
16 how the defendant used them.

17 The evidence of that starts with an article from  
18 *Inspire* magazine that was on the defendant's laptop, Make a  
19 Bomb in the Kitchen of your Mom.

20 And this article was published by AQAP to help people  
21 like the defendant learn how to make bombs with the ingredients  
22 that you would find in your house, so that you could do, as the  
23 defendant said, "an attack on the kuffar in their backyard," in  
24 the United States, without having to go any place for any  
25 specialized training, without needing access to a lab or any

HAC9RAH5

Summation - Mr. Bove

1 kind of special chemicals. This article provided the  
2 instructions, and the defendant followed almost all of them.

3 Let's start with the outer container. An outer  
4 container is basically just a concealment bag, a way to hide  
5 the bomb so that it doesn't get detected after it's planted.  
6 Where did the defendant get the idea from this? From the  
7 article itself. This is not an excerpt from the article, and  
8 there's a red box around one of the pictures from it. The  
9 article itself recommends placing the bomb in a bag so it can  
10 be left on the street and people will just think it's a normal  
11 item. And you know that that's exactly what the defendant did  
12 at 23<sup>rd</sup> Street and at 27<sup>th</sup> Street. That's why it is so  
13 critical to the safety of the people who were on 27<sup>th</sup> Street  
14 that those two men picked the bag up and took the bomb out.  
15 That is the way that that bomb got discovered. So here is a  
16 picture on the left, the defendant with the two outer  
17 containers, the concealment bags.

18 These are two pictures of some of the evidence that  
19 was collected from 23<sup>rd</sup> Street. This evidence came in  
20 through Special Agent Macdonald. And you were probably  
21 wondering at the time, given everything else that was found on  
22 23<sup>rd</sup> Street -- cellphone fragments, Tannerite labels, ball  
23 bearings -- why are we talking about some pieces of cloth?  
24 That's because these are the pieces of the bag that the  
25 defendant used to hide the bomb. Those were collected.

HAC9RAH5

Summation - Mr. Bove

1 Remember, it includes a zipper. These were collected because  
2 they are components of the outer container of this bomb.

3 What's an inner container? In this case the defendant  
4 followed the advice of *Inspire* magazine. He followed this  
5 article and he used pressure cookers. You can see in the red  
6 box on the top the article recommends: The pressurized cooker  
7 is the most effect method. Method for what? A lone wolf  
8 terrorist attack to kill Americans.

9 There's a picture of a pressure cooker in the article,  
10 and you know that the defendant used pressure cookers in both  
11 bombs. There were pressure cooker valves found on 23<sup>rd</sup>  
12 Street and 27<sup>th</sup> Street you have the entire pressure cooker  
13 body before you.

14 A fusing system is kind of like a fancy word for a  
15 detonator, the way that the defendant set up the bomb so that  
16 it would go off. In this case, at 23<sup>rd</sup> Street and 27<sup>th</sup>  
17 Street, as well as at Seaside Park, the defendant used  
18 cellphones with alarms.

19 How did this work? Well, first you need a power  
20 source, something to provide enough electricity to light that  
21 Christmas tree lightbulb. The cellphone battery does that.  
22 And Mr. Mcfarlane testified that the batteries at issue in this  
23 case were sufficient to provide enough electricity to light  
24 those Christmas tree lightbulbs. That was the point of that  
25 testimony; that he did the test to make sure that these two

HAC9RAH5

Summation - Mr. Bove

1 types of phones, the LG440 that was used at Seaside and 23<sup>rd</sup>  
2 Street and the Samsung that was used at 27<sup>th</sup> Street, that  
3 they could, would, in 27<sup>th</sup> -- in the case of 23<sup>rd</sup> Street  
4 did -- do that job.

5 How? An alarm goes off on the phone and it sends some  
6 current out to the place where the vibrate motor is supposed to  
7 be. The defendant removed those motors so that the current  
8 would go to the wires that he soldered onto the circuit board.

9 What happens next with that current? It goes to the  
10 Christmas tree lightbulbs that he also connected. What happens  
11 then? The Christmas tree lightbulb lights up, but the  
12 lightbulb itself is broken, so the filament is exposed to the  
13 explosive and that's when the bomb detonates. That's how the  
14 23<sup>rd</sup> Street bomb went off and that's how the 27<sup>th</sup> Street  
15 bomb was designed to go off.

16 These are the pieces of evidence that show you the  
17 different fusing systems. First from 23<sup>rd</sup> Street there were  
18 only fragments because that bomb went off of the cellphone.  
19 You saw the back of the phone with the IMEI label. The next  
20 picture down is the cover of the phone. And then, finally, the  
21 third picture on the bottom is from the cellphone battery, the  
22 power source. And the picture on the right you know that that  
23 piece of evidence was recovered in full from 27<sup>th</sup> Street in  
24 light of the render-safe procedure that removed that phone  
25 before the bomb was further detonated -- excuse me, further

HAC9RAH5

Summation - Mr. Bove

1 rendered safe.

2                   Christmas tree lightbulbs. This is right out of,  
3 again, the *Inspire* play book. This is the advice they gave,  
4 and this is the evidence that was found. Christmas tree  
5 lightbulbs were in the 27<sup>th</sup> Street bomb. Christmas tree  
6 lightbulbs were found at Seaside. The defendant is using the  
7 same methodology, the same bomb design three times, Seaside,  
8 23<sup>rd</sup> Street, 27<sup>th</sup> Street. We don't have the lightbulb from  
9 23<sup>rd</sup> Street likely because it was destroyed in the blast that  
10 the defendant caused.

11                   Let's talk a little bit about the evidence relating to  
12 these phones. So, as I said, the phone that was recovered in  
13 Seaside, the same make and model of the phone that the  
14 defendant used at 23<sup>rd</sup> Street, an LG 440 phone. And there's  
15 a record in evidence that shows you that those two phones were  
16 sent to the same Family Dollar store in Perth Amboy,  
17 New Jersey. And look at the screen about where that Family  
18 Dollar was. Blocks away from where the defendant worked and  
19 blocks away from this 12 Harbor Terrace address where the  
20 defendant used to have an apartment. This is where the  
21 defendant bought two of the phones that he used to detonate  
22 these bombs.

23                   This is some of the evidence relating to the 27<sup>th</sup>  
24 Street phone. So because it was recovered intact, we were able  
25 to determine what the IMEI, the identification number, was for

HAC9RAH5

Summation - Mr. Bove

1 the phone. And this phone, too, was linked to Perth Amboy.

2 This is that 12 Harbor Terrace address that I was just talking  
3 about. You can see it in the bottom right of the screen.

4 Now this record indicates that the billing party is  
5 Mohammed Rahimi, somebody other than the defendant. But look  
6 at when this phone was active. See the dates in the red box,  
7 2010, 2013, 2011. This is a phone that was being used actively  
8 years ago. Then it was sitting in one of these houses, 12  
9 Harbor Terrace, maybe 104 Elmora. The defendant had access to  
10 it and he decided to use this in the 27<sup>th</sup> Street bomb.

11 This is some of the evidence that you saw from that  
12 phone itself. Mr. Mcfarlane told you there was an alarm record  
13 in the phone set for 9 p.m., set to detonate the bomb on 27<sup>th</sup>  
14 Street. That's how you know that he intended to cause an  
15 explosion, to cause death, and to cause property damage when he  
16 planted that bomb.

17 Now there was testimony about not being able to tell  
18 what the specific time on the phone was set for because the  
19 battery had been removed before it was brought down to  
20 Quantico. But that doesn't affect the time of the record, the  
21 alarm record that was set. So whatever the time was before or  
22 after that battery removed, the evidence that is most  
23 pertinent, I submit, is that that thing had an alarm on it set  
24 to go off at 9 p.m.

25 You also saw and heard from Dee J. Fife and Heather

HAC9RAH5

Summation - Mr. Bove

1 LaSalle that the defendant's fingerprints and DNA were on this  
2 phone. The fingerprints, this is the testimony where the  
3 fingerprints are up inside the screen. This is more evidence  
4 that the defendant built these bombs himself. He's a  
5 sophisticated bombmaker who understands how to put these things  
6 together and he understands what they will do. He knew what  
7 would happen when that 23<sup>rd</sup> Street bomb went off and he fully  
8 expected the same thing to happen when he planted that bomb at  
9 27<sup>th</sup> Street.

10 Let's talk about the explosives the defendant used.  
11 Starting with the guidance from Make a Bomb in the Kitchen of  
12 your Mom, the article is clear you don't have to use one  
13 substance, and in this case the defendant didn't. One of the  
14 reasons that he didn't was that the pressure cooker required a  
15 lot of explosives. And you see this is a concern raised in the  
16 article. In order to fill, for example, a pressurized cooker,  
17 you may want to use gun powder, powder from fireworks, but it  
18 might take more than one substance. And that's what we saw  
19 here.

20 On 23<sup>rd</sup> Street the defendant used ammonium nitrate,  
21 a high explosive. And on 27<sup>th</sup> Street, as we've been talking  
22 about, a mix of the black powder that he made at his house and  
23 also the HMTD that he made in that bedroom.

24 This is some of the evidence that helps to show you  
25 that the defendant used ammonium nitrate in the 23<sup>rd</sup> Street

HAC9RAH5

Summation - Mr. Bove

1 bomb. They are the fragments of the Tannerite label that were  
2 recovered on the street. And, remember, not just recovered  
3 near the scene of the blast, blown all the way across the  
4 street to the south side of the street a few yards down from  
5 where the dumpster landed.

6 How do you know that the defendant was thinking about  
7 making ammonium nitrate based explosives? From the laptop.  
8 Here are two of the images from the laptop. He's looking at  
9 detonators anonymous. There's an 84 percent ammonium nitrate  
10 explosive on the left photo, and then on the right there's  
11 another picture from explosives.net with an explosive that  
12 involves the chemicals ammonium nitrate and diesel.

13 So this is what the defendant planned for the 23<sup>rd</sup>  
14 Street bomb and this is why that bomb caused as much damage as  
15 it did. You heard the testimony from Mr. Mothershead and from  
16 Special Agent DeFusco about how powerful ammonium nitrate is as  
17 an explosive and you saw exactly the extent of the damage that  
18 it did.

19 This is another document that shows you the defendant  
20 was thinking about using ammonium nitrate as an explosive at  
21 23<sup>rd</sup> Street. This one is from his iCloud. And in the red  
22 box you can see more instructions about ammonium nitrate based  
23 explosives.

24 Now let's talk a little bit more about the black  
25 powder and the HMTD. We've already talked about the rock

HAC9RAH5

Summation - Mr. Bove

1 tumbler. The defendant used that to mix up the black powder.

2 There was a black powder residue on the rock tumbler as well as  
3 his fingerprints.

4 Yesterday you saw these pictures from the defendant's  
5 laptop. Step-by-step instructions for making HMTD.

6 I showed you earlier the way that the purchases the  
7 defendant made and the Ronald Welsh Amazon account line up  
8 exactly with the tools that he needed to make the HMTD that was  
9 found in this explosive.

10 In case the pictures weren't clear enough  
11 instructions, the defendant also wrote them down in the same  
12 note from his iCloud account. So this is text above the  
13 ammonium nitrate instructions. These are the ingredients for  
14 making HMTD.

15 So you can tell from this document the defendant is  
16 thinking about these things together. It's one single attack.  
17 These are the explosives he's thinking about using. These are  
18 the explosives that he did, in fact, use. Ammonium nitrate at  
19 23<sup>rd</sup> Street. HMTD and black powder at 27<sup>th</sup> Street.

20 This is a photo we looked at when we resumed from the  
21 break, the different evidence of the residues that were found  
22 in his bedroom, in his laboratory and on the rock tumbler.

23 Now let's talk a little bit about the fragmentation.

24 Inspire is clear about this. This is also from the  
25 article. You need to also include shrapnel. The best shrapnel

HAC9RAH5

Summation - Mr. Bove

1 are the spherical ones. As you can see in the figures, you  
2 need to glue them to the surface of your canister.

3 The defendant followed this instruction exactly.  
4 That's exactly what he did. You knew that from all the  
5 fragmentation, the shrapnel, the ball bearings that were picked  
6 up on 23<sup>rd</sup> Street. That was additional testimony from  
7 Special Agent Macdonald talking about how these things were  
8 found almost all the way to Sixth Avenue, blown all over the  
9 street.

10 And then you were able to see from the 27<sup>th</sup> Street  
11 device exactly what it looks like when the defendant glued the  
12 ball bearings together, put them in a sheet, and packed them in  
13 the device because that sheet with the adhesive was recovered  
14 intact out of the bomb when it was defused at Rodman's Neck.

15 So that was the evidence about the specific details of  
16 the explosives, the evidence that shows you that they were  
17 designed in a sophisticated way. They were designed based on  
18 the playbook, the blueprint provided by terrorists and so they  
19 reflect that the defendant built them in order to conduct a  
20 terrorist attack designed to kill people here in the U.S. and  
21 to damage property.

22 Now let's talk in a little bit more detail about the  
23 charges.

24 Now, as I said in the beginning, Judge Berman is going  
25 to instruct you on the law. Whatever Judge Berman says

HAC9RAH5

Summation - Mr. Bove

1 controls. I'm going to talk a little bit about each charge and  
2 some of the things that I believe that we are required to prove  
3 and the evidence that we have provided to you to establish  
4 those elements.

5 Let's start with the charges that relate to the 23<sup>rd</sup>  
6 Street bombing.

7 So Count One charges the defendant with using a weapon  
8 of mass destruction at 23<sup>rd</sup> Street. And these are summaries  
9 of the elements that I expect Judge Berman will instruct you  
10 that the government's required to establish.

11 And the first is that the defendant knowingly used a  
12 weapon of mass destruction. And listen to Judge Berman when he  
13 provides you with the definition of weapon of mass destruction.  
14 It's straightforward. It sounds something like this. Any  
15 explosive bomb or similar device will suffice for purposes of  
16 that element. And you know that the defendant employed a  
17 weapon of mass destruction at 23<sup>rd</sup> Street because the bomb,  
18 in fact, went off.

19 There's really no question that the weapon of mass  
20 destruction was deployed against people and property in the  
21 U.S. It went off on 23<sup>rd</sup> Street and you saw the damage that  
22 it did.

23 The third thing you'll be required to consider is  
24 whether the defendant had lawful authority to use a weapon of  
25 mass destruction. And that's why we talk about these bombs in

HAC9RAH5

Summation - Mr. Bove

1 terms of improvised explosive devices, homemade bombs. He was  
2 absolutely not authorized to use any of these materials in the  
3 way that he did.

4 Finally, the last element requires proof of use of it  
5 in interstate commerce. And I expect Judge Berman will  
6 instruct you that this includes transportation, transportation  
7 like the train that the defendant took from New Jersey into  
8 New York.

9 Count Three also relates to the 23<sup>rd</sup> Street bombing.  
10 This one charges bombing a place of public use. And these are  
11 some of the elements that you'll be asked to consider. Whether  
12 the defendant knowingly placed or detonated an explosive in a  
13 place of public use. And, again, here I expect Judge Berman  
14 will instruct you that the definition of explosive is broad and  
15 it applies to things like bombs and chemicals that may cause  
16 explosions. And these are elements that are easily met at  
17 23<sup>rd</sup> Street because of the ammonium nitrate residue that was  
18 found there, because you saw the Tannerite label which  
19 indicates that ammonium nitrate was used, and you saw the  
20 evidence from the laptop that the defendant was looking up how  
21 to make ammonium nitrate explosives.

22 Place of public use I expect Judge Berman will  
23 instruct you involves any place that's accessible to the public  
24 such as a business. So when you consider that element think  
25 about the Townhouse Inn of Chelsea. Think about Orange Theory

HAC9RAH5

Summation - Mr. Bove

1 Fitness. Think about the businesses on 23<sup>rd</sup> Street that were  
2 impacted by the bomb that detonated.

3 Next you'll be asked to consider whether the defendant  
4 intended to cause death or serious bodily injury or extensive  
5 destruction resulting in major economic loss. The defendant  
6 did, in fact, cause extensive destruction resulting in major  
7 economic loss. And the way that he put this bomb together with  
8 the fragmentation that it included shows you that he intended  
9 to cause much more than that. He intended to kill and he  
10 intended to cause serious bodily injuries, injuries like the  
11 one you heard about from Helena Ayeh. Remember what she told  
12 you about what happened to her eye. She paused and asked  
13 questions of people around her about whether she still had an  
14 eye because of the piece of shrapnel from the defendant's bomb  
15 that struck her in the face, struck her in the face just yards  
16 away from where the dumpster landed right outside her doorstep.

17 Next you'll be asked to consider for this charge  
18 whether the offense took place in the United States. That one  
19 is plainly met.

20 And finally the last element I expect Judge Berman  
21 will instruct you that you need to think about whether this was  
22 an attempt by the defendant to compel the U.S. Government to  
23 act or the victim is a foreign national.

24 So on the first point, was this an attempt by the  
25 defendant to compel the U.S. Government to act. When you

HAC9RAH5

Summation - Mr. Bove

1 consider whether that's the case, think about the defendant's  
2 letter. The defendant wrote a letter in this case on the first  
3 page directed to the U.S. Government. That is how you know  
4 that he intended through this attack to cause the U.S. to  
5 change the way that it was operating.

6 You also know that from his terrorist propaganda.  
7 Because that is all about what Anwar al-Awlaki, al-Adnani and  
8 bin Laden were talking about, changing U.S. policy, compelling  
9 the U.S. Government to change the way it's acting.

10 The defendant was driven by these terrorist motives.  
11 You saw that from the evidence on his laptop, *Inspire* magazine,  
12 and you saw that from the letter. And that's why this element  
13 is satisfied.

14 In the alternative, we can establish this element by  
15 showing that one of the victims was a foreign national. You  
16 heard from Ms. Merritt this morning. Not a citizen of the  
17 United States. So this element is easily satisfied.

18 Count Four, ladies and gentlemen, also in this group  
19 relating to the 23<sup>rd</sup> Street bomb. This is a charge that  
20 relates to destruction of property by explosive. And the first  
21 thing that you'll be asked to consider is whether the defendant  
22 used an explosive to damage or destroy property.

23 The bomb went off, ladies and gentlemen. This element  
24 is satisfied.

25 Was property used in interstate or foreign commerce.

HAC9RAH5

Summation - Mr. Bove

1 Again, think about the businesses on 23<sup>rd</sup> Street that were  
2 impacted. Think about what Eric Ward told you about the  
3 business that was going on at the Townhouse Inn of Chelsea.  
4 That was the week of the United Nations conference. The Inn  
5 was packed. And I believe he said 11 of the 13 rooms were  
6 booked with international guests. Those are people who you can  
7 consider as victims in the previous count because they were --  
8 the Inn had to shutdown because of the attack. You can  
9 consider them here and the commerce that they brought when  
10 you're thinking about whether this element is satisfied.

11 Next, you'll be asked if the defendant acted  
12 maliciously. Ladies and gentlemen, the defendant placed a bomb  
13 on 23<sup>rd</sup> Street packed with shrapnel. You saw what it did.  
14 You saw the impact that it had on the victims. When you hear  
15 Judge Berman's instruction about what maliciously means you'll  
16 have little doubt that this standard is met.

17 Was there personal injury? Think about Ms. Ayeh.  
18 Think about other witnesses who told you that they still have  
19 shrapnel in their bodies, like Ms. Wilson. There were absolute  
20 injuries sustained as a result of the attack on 23<sup>rd</sup> Street.

21 Now let's talk about the 27<sup>th</sup> Street charges. There  
22 are two of these. Count Two charges the defendant with using  
23 or attempting to use a weapon of mass destruction at 27<sup>th</sup>  
24 Street. So one of the things that you'll be asked to consider  
25 is whether the pressure cooker that was recovered there is a

HAC9RAH5

Summation - Mr. Bove

1 weapon of mass destruction. And you know that the answer to  
2 that is yes because it was taken apart and you were able to see  
3 it in different pieces, the explosives that were placed in it,  
4 the detonator that the defendant set to make it go off, the  
5 frag, the shrapnel, the ball bearings that he packed in there  
6 designed to kill people. This was clearly a weapon of mass  
7 destruction. And the question will be whether the defendant  
8 used or attempted to use it.

9 And here, again, you'll have to think about whether  
10 the defendant intended to use it. He planted it, ladies and  
11 gentlemen. He obviously intended to use it.

12 And whether or not he took a substantial step towards  
13 doing so. He walked that bomb from Penn Station down to 23<sup>rd</sup>  
14 Street, back up to 27<sup>th</sup> Street and left it there. Numerous  
15 substantial steps that satisfy the requirement for an attempt  
16 for Count Two.

17 The remaining elements are straightforward. He left  
18 it on 27<sup>th</sup> Street. So it was plainly used against a person  
19 or attempted to be used against a person or property in the  
20 U.S. Like the 23<sup>rd</sup> Street bomb, this was an improvised  
21 explosive device. The defendant did not have authority to use  
22 it. And, again, interstate commerce here includes  
23 transportation, the trains.

24 Count Five charges the defendant with attempted  
25 destruction of property by an explosive at 27<sup>th</sup> Street. So

HAC9RAH5

Summation - Mr. Bove

1 here you'll be asked to consider whether he used an explosive  
2 in an attempt to destroy the property.

3 The black powder was an explosive, ladies and  
4 gentlemen. The HMTD was an explosive. The way the defendant  
5 configured it in the pressure cooker was a bomb, a bomb with a  
6 detonator that he set to go off at 9 p.m. on September 17<sup>th</sup>.  
7 That's why this element is satisfied.

8 Property here, as well, was used in interstate  
9 commerce because of the shipments, the products that were  
10 ordered to build these bombs.

11 And then here's the definition of maliciously. That  
12 the defendant used the explosive with intent to cause damage or  
13 harm or in reckless disregard to the likelihood of damage or  
14 harm.

15 When you pack the number of ball bearings into a  
16 pressure cooker bomb that the defendant did, you obviously  
17 know, he obviously knew that if this bomb detonated it would  
18 have hurt people and potentially kill them in the same way that  
19 the bomb destroyed property and injured people on 23<sup>rd</sup>  
20 Street.

21 So as you think about whether the defendant acted with  
22 intent to detonate this bomb on 27<sup>th</sup> street I ask -- these  
23 are the pieces of evidence that I ask that you consider. The  
24 alarm was set. The defendant placed that bomb with an alarm to  
25 make it go off. It was packed with shrapnel. This is a

HAC9RAH5

Summation - Mr. Bove

1 picture of some of the shrapnel that was inside it. And glued  
2 together in a sheet just like *Inspire* magazine told the  
3 defendant to do.

4 And then think about the letter. The letter doesn't  
5 say bombs may be planted. I'm thinking about planting bombs.  
6 I might get around to it. The defendant says "bombs will be  
7 heard in the streets." He wrote "your people will hear the  
8 bombs." The defendant wrote down his intent. He committed it  
9 to writing in the letter.

10 And, lastly, when you think about whether the  
11 defendant acted with intent to kill, with intent to destroy,  
12 with intent to cause devastation when he planted the bomb at  
13 27<sup>th</sup> Street, think about the steps that he actually took.  
14 You need a pressure cooker. You buy 8,000 ball bearings. You  
15 glue them together. Look at this. These are the ball  
16 bearings, ladies and gentlemen. You glue them together based  
17 on the guidance of a terrorist propaganda magazine. You pack  
18 them inside with black powder and HMTD. You take a cellphone,  
19 take it apart, take the vibrate motor out, solder wires onto  
20 the phone, hook it up to a Christmas tree lightbulb, put the  
21 cover on, caulk it shut, run the wires through this main hole,  
22 set the alarm for nine o'clock. And you leave this on the  
23 street. That's what he did twice. And he did it at 27<sup>th</sup>  
24 Street knowing that that bomb worked at 23<sup>rd</sup> Street and that  
25 the bomb had worked at Seaside. He knew that his cellphone

HAC9RAH5

Summation - Mr. Bove

1 detonators worked and he knew exactly what this would do.

2 And so when you're deliberating and you're asked to  
3 consider whether this man intended to kill and harm and do  
4 damage at 27<sup>th</sup> Street, think about the steps, the individual  
5 steps that that actually required, to purchase these things, to  
6 get them to Perth Amboy, to get them to his house, to make the  
7 HMTD in his bedroom, to package this all together, to glue that  
8 shrapnel together on the advice that it would cause more harm,  
9 it would increase the potential that you would kill people.  
10 And then think about the defendant. Think about that video of  
11 him leaving this near the mailbox on 27<sup>th</sup> Street, hidden in a  
12 bag so it looked normal, knowing that he had already detonated  
13 a bomb at 23<sup>rd</sup> Street and he had already done another one  
14 that morning in Seaside.

15 The defendant knew and intended that the 27<sup>th</sup> Street  
16 bomb would go off and that's why he's guilty of the charges  
17 relating to that device, the attempt charges, because he  
18 intended to do it and he took numerous steps in furtherance of  
19 that.

20 Let's talk about the third category of charges, the  
21 ones that relate to the transportation, use, and possession of  
22 these bombs. And these are some of the pictures that I asked  
23 you to think about where the defendant is transporting bombs  
24 through Penn Station in crowded areas around Penn Station.

25 So Count Six relates to the interstate transportation

HAC9RAH5

Summation - Mr. Bove

1 and receipt of explosives. And, again, you'll be asked to  
2 consider whether the defendant transported an explosive.  
3 You'll be asked to consider that term.

4 The defendant transported an ammonium nitrate  
5 explosive in the 23<sup>rd</sup> Street bomb, black powder and HMTD in  
6 the 27<sup>th</sup> Street bomb, and he also transported, let's not  
7 forget about the backpack, similar substances, six additional  
8 bombs strapped to his back walking through Penn Station. Did  
9 he transport it in interstate commerce? New Jersey to New York  
10 on the train.

11 And did he do so with knowledge or intent that the  
12 explosive would be used to injure an individual or unlawfully  
13 destroy a building, vehicle, or property? Absolutely.

14 Counts Seven and Eight relate to carrying a  
15 destructive device in furtherance of a crime of violence.  
16 These are additional charges that relate to the use, carrying,  
17 and possession of bombs, additional charges intended to focus  
18 on the conduct where the defendant was carrying these things,  
19 transporting them around before he planted them, before he  
20 planted them at the 23<sup>rd</sup> Street and before he planted the  
21 bomb at 27<sup>th</sup> Street. You saw him do that on the video.

22 And so one of the things that you'll be asked to  
23 consider is whether the defendant committed a crime of  
24 violence. And so the crimes of violence that are charged are  
25 Counts One, Three, and Four for 23<sup>rd</sup> Street and Two and Five

HAC9RAH5

Summation - Mr. Bove

1 for 27<sup>th</sup> Street.

2 And then the next element is whether the defendant  
3 knowingly used or carried a destructive device during and in  
4 relation to or knowingly possessed a destructive device in  
5 furtherance of a crime of violence.

6 Ladies and gentlemen, when you consider this charge  
7 think about the video of the defendant wheeling these bags  
8 around to the locations where he planted them. Think about the  
9 defendant wheeling the bags full of bombs through Penn Station  
10 down Eighth Avenue. He plants the 23<sup>rd</sup> Street bomb, still  
11 carrying the 27<sup>th</sup> Street bomb, walks back up Seventh to  
12 27<sup>th</sup> and plants that one also. Consistent. He was carrying  
13 in possession throughout the attack in Manhattan. He was  
14 carrying in possession that, as I said in the beginning,  
15 created grave additional dangers to all the people on the  
16 street that night. Not just the people on 23<sup>rd</sup> Street, the  
17 people on those avenues, the people in Penn Station, and that's  
18 why there are additional charges relating to this conduct.

19 Now, ladies and gentlemen, I'm going to sit down  
20 pretty soon. I'm just about done. Before I do that I want to  
21 say a little bit about some of the defense arguments that  
22 you've heard so far. As I've already said today, the defense  
23 has no burden here. The defendant is presumed innocent. The  
24 government has the burden of proof. We must establish that  
25 he's guilty beyond a reasonable doubt.

HAC9RAH5

Summation - Mr. Bove

1           When arguments are made, again, you should scrutinize  
2 them. Think about whether they make sense. And please think  
3 about the defense arguments that are made in this case that  
4 have been made already in this context. This is the guidance  
5 from *Inspire* magazine about what to do in a situation like the  
6 one the defendant is in right now. "Tips for our brothers in  
7 the United States of America. Have a convincing cover story  
8 for anything suspicious. The story needs to be good enough to  
9 convince a jury if you ever get that far."

10           I submit to you, ladies and gentlemen, that the story  
11 is not good enough. These are some of the arguments that  
12 you've heard so far. In opening statement the defense tried to  
13 characterize the evidence as tiresome and repetitive. We've  
14 already talked about that.

15           You heard some cross-examination of Special Agent  
16 Steven Fullington about whether Mayor DeBlasio and Governor  
17 Cuomo were at the crime scene. That cross-examination was  
18 designed to distract you, to distract you from the evidence  
19 that was collected at that scene and the evidence that proves  
20 that the defendant is the one who did this.

21           You also will recall that there was extensive  
22 cross-examination of Special Agent Ken Leung about the way that  
23 he safeguarded the 27<sup>th</sup> Street phone after Detective Hallik  
24 removed it from the bomb. Ladies and gentlemen, that was also  
25 a distraction because the next day Special Agent Jill Enyart

HAC9RAH5

Summation - Mr. Bove

1 testified and explained to you that she responded to that  
2 scene, collected the phone, she was the evidence collection  
3 person, and insured that it made it down to Quantico so that it  
4 could be safely considered.

5 The arguments that have been presented to you so far  
6 are intended, I submit, to distract you from the evidence, the  
7 evidence in this case that proves that the defendant is guilty.

8 Ladies and gentlemen, I'm going to stop where I  
9 started today. On September 17 of 2016 the defendant conducted  
10 a multiphased terrorist attack, an attack that began in  
11 Seaside, continued at 23<sup>rd</sup> Street, and on to 27<sup>th</sup> Street.  
12 He built these bombs for months. He built them with the  
13 guidance of terrorist organizations. He packed them with  
14 shrapnel designed to kill as many people as possible. It is  
15 nothing short of a miracle that no one died in this attack and  
16 not in any way a defense for this man.

17 The defendant conducted these bombings. You know that  
18 from the letter, from the video, from the fingerprints, from  
19 the DNA, from the laptop, from the iCloud, from the evidence  
20 from his house. At each and every step of this investigation  
21 evidence was collected, evidence was obtained that proves that  
22 this is the man who committed these crimes.

23 This is not a close case, ladies and gentlemen. The  
24 evidence proves that the defendant is guilty beyond a  
25 reasonable doubt of each and every charge in the indictment.

HAC9RAH5

1                   We thank you for your time and attention up to this  
2 point during the trial and today during my closing.

3                   I ask that you follow Judge Berman's instructions on  
4 the law. Listen to them carefully and apply them.

5                   Use your common sense as your deliberate, the same  
6 common sense that you use in your everyday lives.

7                   As you think about a situation where a man was caught  
8 on tape, with his fingerprints all over the bombs, his DNA all  
9 over the bombs, bomb making instructions on the laptop, on the  
10 iCloud, bomb residues in his house, if you apply your common  
11 sense to that situation and follow Judge Berman's instructions,  
12 then I submit to you that the only appropriate verdict is  
13 guilty, guilty on all charges. Thank you.

14                   THE COURT: Thanks, counsel.

15                   So we're going to adjourn for today. So tomorrow  
16 morning when you come, 9:15, as soon as we start we'll hear  
17 from the defense. Then the government gets a brief rebuttal  
18 after that. Then I will give you the instructions, the law  
19 that applies in this case, and then you'll begin your  
20 deliberations. So that will probably be sometime around  
21 lunchtime. We'll give you menus in the morning and order lunch  
22 for you for your lunchtime and deliberation.

23                   So between now and then let me just remind you what  
24 I've said just about everyday that you've been here.

25                   First, please don't talk to each other about the case

HAC9RAH5

1 or about anyone who has anything to do with it until the end of  
2 the case when you go to the jury room to decide or deliberate  
3 on your verdict, which will be tomorrow.

4 Second, do not talk with anyone else about the case or  
5 about anyone who has anything to do with it until the trial has  
6 ended and you've been discharged as jurors. You remember I've  
7 said that by talking I'm also referring to e-mailing, texting,  
8 tweeting, or blogging. And I'm referring to any type of  
9 communication in any type of forum including Facebook, MySpace,  
10 Instagram, YouTube, etc., for example. And, additionally, do  
11 not remain in the presence of other people who may be  
12 discussing the case face-to-face orally or online. And anyone  
13 else includes members of your family and your friends and  
14 embraces social media. You may tell them that you are a juror  
15 in a case but please don't tell them anything else about the  
16 case until you've been discharged by me.

17 Third, do not let anyone talk to you about the case or  
18 about anyone who has anything to do with it; and if someone  
19 were to try and talk to you about the case, please report that  
20 to Christine or me immediately.

21 Fourth, do not read any news or internet stories or  
22 articles or blogs or listen to any radio or TV or cable TV or  
23 internet reports about the case or about anyone who has  
24 anything to do with the case.

25 Fifth, do not do any type of research or any type of

HAC9RAH5

1 investigation about the case on your own.

2 So, we've made very good progress and I'll see you  
3 tomorrow morning. Thanks a lot.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

HAC9RAH5

1 (Jury not present)

2 THE COURT: Please be seated for a minute.

3 Ms. Shroff, you will be up tomorrow morning; is that right?

4 MS. SHROFF: One of us will be.

5 THE COURT: One of you. Okay.

6 Then brief rebuttal from the government.

7 MR. DeFILIPPIS: Yes, your Honor.

8 THE COURT: So the jury instructions that we discussed  
9 will be printed. It's my practice to make them available to  
10 the jurors, to each juror. So there you have it. So see you  
11 tomorrow. Thanks.

12 (Adjourned to October 13, 2017 at 9:15 a.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 INDEX OF EXAMINATION

|   |                                 |      |
|---|---------------------------------|------|
| 2 | Examination of:                 | Page |
| 3 | DAVID P. DEFUSCO                |      |
| 4 | Direct By Ms. Crowley . . . . . | 1382 |
| 5 | TSITSI MERRITT                  |      |
| 6 | Direct By Ms. Crowley . . . . . | 1396 |

## 7 GOVERNMENT EXHIBITS

|    |                   |          |
|----|-------------------|----------|
| 8  | Exhibit No.       | Received |
| 9  | 202-29A . . . . . | 1401     |
| 10 | 202-29B . . . . . | 1401     |